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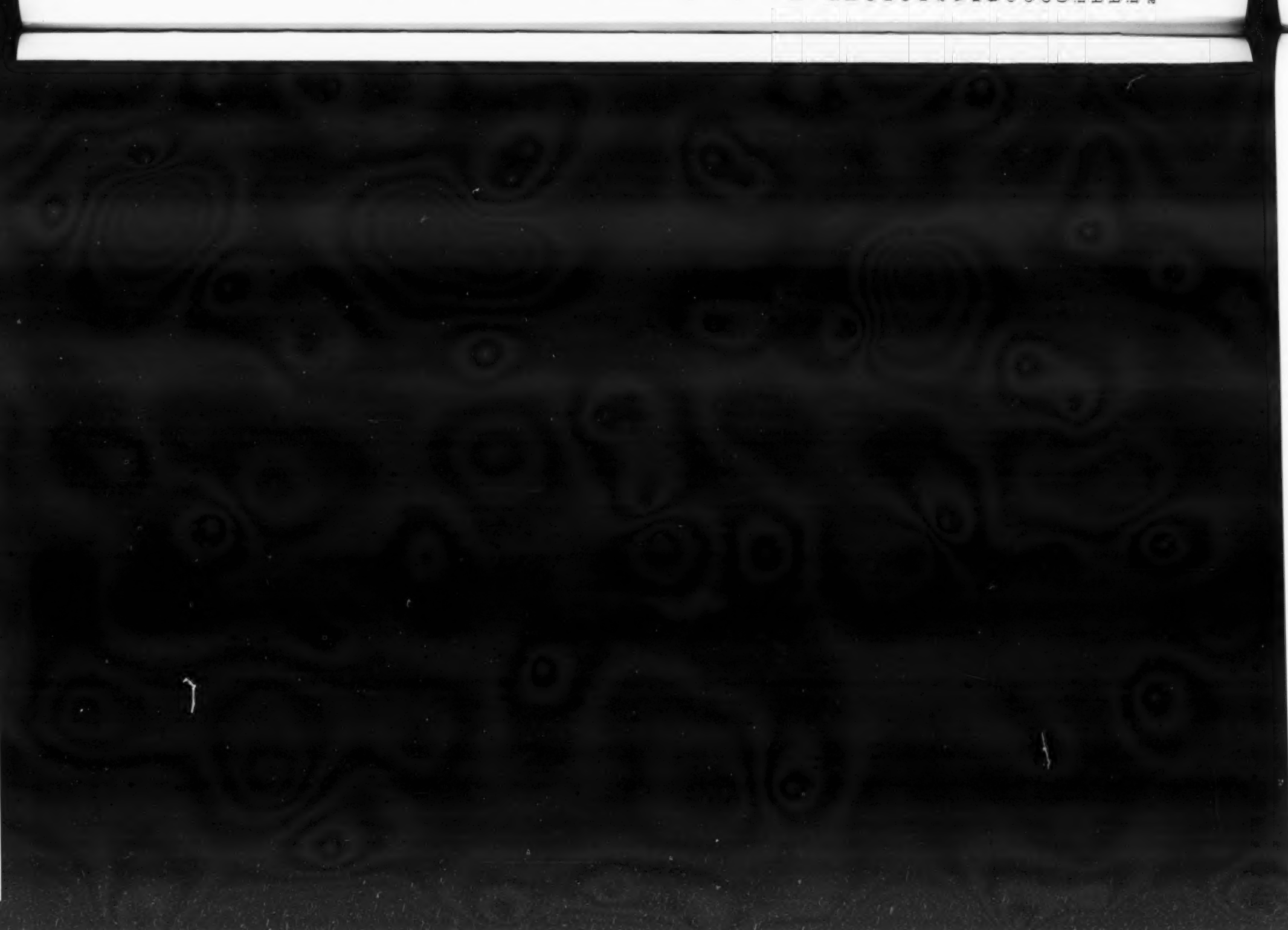

ACCOUNTANCY

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VOL. LI. (Vol. 2 New Series) **MARCH, 1940** **Number 559**

CONTENTS

PROFESSIONAL NOTES

Heavy Damages for an Incorporated Accountant

Not only the many members of the Society who are friends of Mr. C. V. Best, Incorporated Accountant, but also the accountancy profession generally, can congratulate him on his resounding success in a recent law case, reported—with some inevitable condensation—in later pages of this issue. A monstrous suggestion was made that Mr. Best had accepted a bribe to betray a client's interests in a very large share transaction involving some half a million pounds. There was not the slightest shred of truth in the suggestion and Mr. Best, acting with commendable alacrity, denied it and began proceedings for slander. From the evidence and the decision in another related case brought by a Mr. Chaplin, who was alleged to have given the bribe, it was abundantly clear that the suggestion of bribery was absolutely false and was even supported by forged documents. These documents the Judge impounded and for this reason we feel precluded at this stage from enlarging upon the issues involved. Let it suffice to say that when there is an infamous attack upon a blameless and well-known member of the profession, and he takes action against the persons concerned, with the result that he receives very heavy damages, amounting to £5,000, and his costs, he has not merely defended his own personal position but has also done a service to the profession at large. Members of the profession are not immune, as this case shows, from the most fantastic allegations and to answer calumnies cast upon them may have to involve themselves in lengthy High Court proceedings. To anybody reading the evidence it will be clear that Mr. Best could not have failed to be completely successful in the case, and we would congratulate him upon the outcome.

The Society's Examinations

The results of the December examinations of the Society of Incorporated Accountants, which are

published in full on pages 175-178 of this issue, do not appear to be adversely affected by war conditions. In fact, the percentages of passes in both the final examination and in the intermediate examination were better than in the last examinations before the war. Despite the travelling in which candidates were involved by the decision of the Council to hold the examinations at Taunton School and Southport Technical College, there can be no doubt that candidates gained by the more peaceful atmosphere away from the large cities and towns, and by the spirit of *camaraderie* which resulted from residence together at the new centres. If only on these grounds, the decision not to bring the examinations back to the urban centres where they were held in peace-time is to be welcomed. But the decision was also based upon the fact that nobody can forsee what conditions will be like in the big towns by the end of July or the beginning of August, when the next examinations will be held (the exact dates have not yet been fixed, but an announcement will be made shortly).

The second examinations this year will be held towards the end of December. This should be particularly noted by candidates who register for military service on March 9 (those born between January 1, 1915, and March 9, 1920), because a candidate for the Society's examinations is extremely unlikely to obtain postponement of military service for more than nine months from the date of his registration. In a recent test case where the applicant was studying for a university degree, the umpire laid it down that nine months from registration was the maximum period of postponement. While this decision does not mean that the Society's candidates will necessarily receive postponement—each case is considered by the Hardship Committee on its merits—it does mean that nine months must be regarded as the longest period that can be obtained in any circumstances. Thus, candidates who register for military service before the end of March, 1940, would probably not receive sufficient postponement to allow them to sit for the December examination. They should, therefore, consider whether to apply to sit in July-August, bearing in mind that the Council has passed a resolution empowering the appropriate Committee to allow candidates to sit slightly before the dates at which they would otherwise be permitted to come forward for the examinations. Candidates who are not yet called up to the Forces, but become liable for military service in the near future, may wish to apply to a Hardship Committee for postponement of military service on grounds of exceptional hardship. They may obtain from the Society a memorandum of information on the subject.

The Borders Case Again

The case which the Bradford Third Equitable Building Society brought against Mrs. Borders, and in which she counterclaimed against the society, raised widespread interest a year ago (see ACCOUNTANCY, March, 1939, pp. 196-7). Mr. Justice Bennett decided *inter alia* that Mrs. Borders could not succeed then in that part of her counterclaim against the building society in which she asked for damages for fraudulent misrepresentation. Against this judgment Mrs. Borders appealed, (*Bradford Third Equitable Benefit Building Society v. Borders* (1940, 1 All E.R. 302.)) Other matters which came up for decision in the lower Court were not resurrected in the appeal case; the main issue raised in the first instance, whether building society advances secured in part by collateral were illegal or not, was finally settled by the new Building Societies Act, which established their legality beyond question under certain conditions. In her appeal, Mrs. Borders submitted that she had been involved in loss by obtaining a mortgage advance for the purchase of a shoddy house, and that she had been induced to do so by the builder's brochure, in which a " special arrangement with a leading building society " was referred to as proof of the " amazing value " of the house. The lower Court having established the fact that the house was very badly built, Lord Justice Clauson decided the appeal in favour of Mrs. Borders, holding that she was induced to obtain the mortgage, and the building society must have known she was induced to do so, by misrepresentation in the brochure, which the society knew to be false. Presumably there have been few cases where fraudulent misrepresentations have been made by a builder, within the knowledge of a building society, and with the intention of leading to the purchase of a house and a mortgage advance from the society. These circumstances would need to be repeated if any other mortgagors were to recover from their building society in emulation of Mrs. Borders.

Reduced Directors' Remuneration in War-time

Many small companies which suffered from the effects of the early months of the war are now preparing their annual accounts. In some of these cases the remuneration of the directors may come up for consideration. Where earnings have fallen because of the war, many directors of director-controlled companies will wish to waive or reduce their remuneration in order to avoid showing a loss, whilst they will also be enabled to obtain the relief accorded by Section 11 of the Finance (No. 2) Act 1939. At the same time they may hope that such reductions will be made good again when business improves. Against the personal income tax and surtax advantages which may accrue from this step, there must, however, be weighed the possible effect

on excess profits tax in the future, having regard to Rule 10 of the Seventh Schedule, which restricts the deduction for directors' remuneration. Thus, where the first chargeable accounting period would show a deficiency for E.P.T. on payment of the full standard remuneration, a reduction in the remuneration will diminish this deficiency. But if on an improvement in business in the second chargeable accounting period the past reduction in remuneration is made good, so that the total remuneration exceeds that of the standard period, the excess remuneration will be disallowed in computing the excess profit. The excess profit, that is, will be reduced by the amount of the diminished deficiency only, so that over both periods E.P.T. at 60 per cent. would, in effect, be chargeable on the amount of the "postponed" remuneration.

War Contracts for Small Firms

There has been considerable criticism that the contracts of the Ministry of Supply have been placed with large manufacturers to the virtual exclusion of small firms. While this criticism may have been largely justified, it must not be overlooked that the large firms were ready at hand in the early months of the war to supply quantities in bulk. If the small firms were to be fully engaged on war orders, some form of special organisation was necessary. The Ministry does indeed appear to be open to criticism in that it has delayed setting up such an organisation. But the Ministry itself was brought into existence some two or three years after it should have been hard at work, and in consequence it has been much occupied in placing the really large contracts, which naturally merit priority. Now at last a step is being taken towards making greater use of the small firms than could have been made while they were engaged only upon such sub-contracts as they received from the large manufacturers. Offers for undertaking the production of munitions are to be considered by area boards which are to be set up. The area boards will refer offers to the advisory committees for examination. This form of organisation seems to leave something to be desired, for it places the onus upon the manufacturer to offer his services to the Ministry, rather than upon the Ministry to ensure that they are forthcoming. Nevertheless, it will be an advance upon the present position, provided the new organisation is set up speedily and made to work smoothly. The Ministry of Supply has also made an arrangement in conjunction with the motor trade organisations that vehicles of the B.E.F. needing repair all come back to this country for attention in civilian garages. This may provide some very small consolation for accountants whose interests largely lie in the depressed motor garage industry.

Apparent Possession

In *Ramsay* v. *Margarett* (1894), a husband had sold the contents of his house to his wife, taking from her a receipt for the purchase money. The receipt was not registered as a bill of sale; and a creditor levying execution against the husband claimed that he was entitled to seize the goods, notwithstanding the sale, since the goods were still in the grantor's *apparent possession*. The Court, however, refused to accept this view, holding that, where the goods which are disposed of by bill of sale are in the apparent possession of two persons, one of whom has purchased them from the other, they must be deemed to be in the possession of the purchaser. In the recent case of *Youngs* v. *Youngs* (*Baker claimant*) (1940, 1 All E.R. 349) the Court was asked to apply this principle where a man had sold his household furniture to his housekeeper. The seller had receipts for the purchase money; but he and his daughter continued to make use of the furniture, and the purchaser continued to serve him in the capacity of housekeeper. Distinguishing this case from that of *Ramsay* v. *Margarett*, the Court of Appeal held that, though a husband and wife living together could be said to have co-extensive possession of the contents of their home, it could not be said that such co-extensive possession was enjoyed by an employer and his servant even where they were living in the same house. In this case, therefore, the goods must be deemed to have been still in the *apparent possession* of the seller, and a creditor levying execution against him could, therefore, ignore the sale and seize the goods.

Mr. Keynes's Revised Scheme

The scheme proposed last November by Mr. Keynes for the financing of the war by compulsory savings did not have a very favourable reception. In consequence, Mr. Keynes, who has re-christened his scheme by the term "deferred pay," has now revised it substantially with a view to making it more acceptable. The main changes consist of a system of family allowances, amounting to 5s. per child, regardless of means; the handing of the compulsory savings to bodies under working-class control, if the persons assessed so wish; a capital levy at the conclusion of the war to meet the sums which would then have to be found for repayment; and a revision of the complete scale of compulsory savings, so as to reduce the burden on the lower income groups. He also advocates more widespread rationing and thinks the "blocking" of excess profits would be preferable to an increase in E.P.T. It will be remembered that the broad outline of the plan was to avoid increases in expenditure by income earners upon consumable goods and thus to avert inflation. This would be done by requiring all income earners to place the scheduled part of their annual income in "blocked" accounts which, except in case of urgent necessity, could not be reclaimed until after the war. Mr. Keynes's revisions of the plan embellish it considerably but it remains doubtful whether even now it will make a widespread appeal. It seems, rightly or wrongly, that the majority of people at this stage of the war prefer to contemplate increased taxation rather than "deferred pay," in order to meet the cost of the war and avoid inflation, though they may have to change their view within a relatively short time.

Building Societies in War-Time

By ARTHUR COLLINS, Incorporated Accountant

Nowadays, when every popular institution rejoices in the employment of a slogan, the building society movement uses the catch-words "The Thrifty Three Millions." In more restrained terms, the movement may be described as a popular thrift medium. But the three million figure is correct. Over two millions of the British public have invested in shares, and nearly a million have placed deposits, with British building societies. The shareholders have invested over £550 million, and the depositors have placed £170 million in securities of these societies. Their savings, with accumulated reserves, account for more than £760 million of assets—nearly £700 million out on mortgage secured on land and buildings, and £70 million in marketable securities or in cash. More than two million householders have acquired their own homes by the aid of the societies since the end of the last war. Such is the volume of the business undertaken by these financial (and in many ways co-operative) trusts, which range from small local institutions to concerns operating through branches all over the country.

Borrowing Short and Lending Long

In the first place, the building society movement is typically British in that, theoretically, it ought not to work at all, but in practice it does. It ought not to work because it embodies the practice of "borrowing short and lending long." The subscriptions of investors and deposits, which are not marketable for realisation, are nearly all placed with building societies subject to short notice of repayment, and in a large measure are, in fact, repayable and repaid at call. The funds are placed with borrowers for use in part-payment of the purchase of their homes, the buyer providing his deposit of, say, 10 per cent., and a knowledge of human nature should suffice to satisfy any outside observer that the home-buyer must be reasonably sure of the permanency of his loan from the building society. He may not have the means to repay at call, or, as a rule, even on short notice. Some societies retain the right to recall the loan on mortgage at, say, six months' notice, but in practice this clause operates to provide more elasticity in adjusting the rate of interest, and it has never had to be used, within the writer's knowledge, to secure a return of the loans. The borrower is permitted by the society from whom he has borrowed to repay the loan almost at any time, on easy conditions (when he has the money).

Floating Capital in War-time

How then, it may be asked, does a building society function in war-time, when it might be supposed that for many reasons there would be a large withdrawal of investments by their shareholders and depositors, while the societies' assets are locked up in bricks and mortar? True it is that not all the money of a building society is lent out on the security of members' homes or other properties. Some margin in the funds is reserved for investment in realisable trustee securities, and in cash at the bank, to provide, in some degree, liquidity in the resources to meet the recall notices of investors. In normal times the management of a society knows by experience the proportion or balance of liquidity to meet withdrawals without taking undue risk of disturbing advances to home purchasers. There is no formula by which even the most experienced management of a building society's affairs can compute and hold in readiness a sufficient amount of money in realisable investments or in cash to meet withdrawals as from time to time they arise either in peace or war. It is the case, arithmetically, that reserves represent about 5 per cent. of the funds of the building societies in the aggregate, but this has been governed rather by this consideration, namely, what is the amount which on the volume of business done each year can be treated as justifiable surplus earnings more prudently reserved than distributed? It is the accumulation of these annual and moderate reserve appropriations which now represent about 5 per cent. of building societies' assets. That fund is there, in realisable securities or in cash, to meet withdrawals, as a first source.

"Profits"

Frequently the commercial man is heard to declare that with business of such magnitude building societies' profits are small. They are indeed. These societies do not trade for profit in the commercial sense. That is a fundamental element in their functions. They are in being to assist householders to become owners of homes at the lowest possible cost for the employment of borrowed money and the society's service. It may be taken as typical that a building society shareholder receives 3½ per cent. from the society on his investment, and a depositor (who has the prior security), 2½ per cent. The rate of interest charged to borrowers being 4½ per cent., the society trades upon a margin, on the whole, of a shade over 1 per cent. Out of this margin the Society pays management expenses of about 12s. per cent. It pays income-tax at a compounded rate in the region of 2s. 9d. in the pound, and it also pays its quota of the national defence contribution towards the cost of the war. All this expense leaves about 10s. per cent. as a surplus annually added to the reserves, mostly invested in gilt-edged securities. When, therefore, building societies

are subjected to the ordinary commercial test of profit-making capacity, they are being measured by a yard-stick quite inappropriate to such a purpose. If undistributed profits in the movement as a whole were to exceed considerably 10s. per cent. per annum on the capital employed, there would be prima facie a case in the public interest, either for a reduction in the rate per cent. charged to borrowers, or an increase in the rate per cent. allowed to shareholders, or possibly both these claims might arise.

War-time Use of Savings

Now we may consider how this war has affected building societies. If it be taken for granted, as, indeed, it must be—for the facts prove it—that this system of borrowing short and lending long can be made to work in times of peace, can it stand the impact of war?

Every institution taking care of the savings of the people feels war's impact forthwith. Who can analyse the motives by which an investor is moved to give notice for the withdrawal of his money from the custody of the concern in which he has placed it? The big banks and even the Government, represented by the Post Office Savings Bank or National Savings Certificates, all alike, on the outbreak of war, are presented with calls for the return of money there invested. But many householders are thrifty because (amongst other things) their savings are to meet the needs of a rainy day. It is but natural that when, with war, the rainy day comes, the thrifty man utilises some part of his savings. Surely that is what "thrift" implies. In point of fact, many thousands of thrifty people have invested their all, as they themselves declare, in a building society, and it is a testimonial to the public service which such societies render, that repayments to investors have been (and are being) made, with regularity and without confusion. Withdrawals have been abnormal, but manageable, and it is generally reported that new investments now exceed withdrawals.

The funds have been forthcoming from the liquid resources already mentioned, and a society can always borrow on the security of its assets as mortgagee, but even greater importance must be attached to that feature of building society management which secures monthly repayments of principal and interest by the borrowers.

Reliability of Borrowers

This source yields to building societies £120 million per annum, and it is a tribute to home-owning borrowers that, even in war-time, arrears of repayments and of interest have been relatively small—certainly not any cause of embarrassment, for it is indisputable that a home-owner does not lightly risk the loss of his home by default, and societies, generally, exercise the utmost forbearance with any borrower in financial difficulties.

The borrowers are playing their part manfully in keeping up their repayments by instalments, and investors do not seem to have been stampeded into withdrawals due, not to household necessities, but to the fear that their security is in danger.

After all, what better security can any financial institution maintain whether in peace, or war in the air, than hundreds of thousands of relatively small domestic properties scattered throughout the length and breadth of the country? After this war, people will still aspire to be home-owners, but new building having now practically ceased, the societies may well serve, for the duration of the war, as conduits of savings into Government War Loans.

In sum, discount (as the reader may) these claims for building societies (presented, as they are, by one who is closely associated with their activities), it would still seem to be clear that these societies are bearing the stress and strain of war-time as well as any other type of financial institution. Does anyone know of a better investment with a yield of 3½ per cent., tax paid?

Excess Profits Tax—III.

This is the third of a series of articles on practical points arising out of the Excess Profits Tax. We invite readers to write to us on futher points of interest and we will endeavour to deal with them in subsequent issues of ACCOUNTANCY

All Businesses Treated as One

Whereas for N.D.C. purposes, each trade or business is a separate unit of assessment, it is expressly provided by Section 12 (5) of the Finance (No. 2) Act, 1939, that for E.P.T. purposes all trades or businesses carried on by the same person shall be treated as one trade or business. This means that a sole trader will have to aggregate the profits or losses and average capital employed in all his businesses, both in selecting his standard period and in arriving at the profits of the chargeable accounting period. It is not permissible to select a different standard period for each business, and to aggregate excess profits so found; the standard profits will be based on the aggregate results of the standard period chosen for the combined businesses.

Where a person carries on one or more businesses as a sole trader, and is also a partner in a firm carrying on another business or businesses, the business or businesses of the firm are not carried on by him, and his share therein will not be taken into account in assessing him personally. All businesses carried on by the firm will be aggregated, however, in assessing the firm, that is, the firm is assessable as if it were

a separate entity. Similarly, where a company carries on several distinct trades, they will be aggregated to find the assessment on the company.

This is the underlying principle on which the assessment of inter-connected companies as one is based, although their being separate entities makes necessary special provision for aggregating their results (see ACCOUNTANCY, February, pages 113 to 115).

INVESTMENTS

" Capital " Rule 3 provides that where the income from investments is not taken into account in computing the profits, the investments are not to be taken into account in computing capital. It goes on to provide that where investments are so left out the principal of any borrowed money to be deducted is to be reduced by the value of those investments (unless the person carrying on the business is not a body corporate and the investments are not charged as security for the borrowed money and interest on it). The term " value " for this purpose requires elucidation, and it is thought that cost price, as defined in Rule 1, is appropriate for this purpose. It is not unlikely, however, that it may be suggested that market value should be taken. Where no violent changes in market value have taken place no argument is likely, but where fluctuations have occurred the choice of definition may be a matter of considerable importance. Neither value is truly related to the borrowed money unless the investments were actually purchased out of the proceeds of the loan, in which case cost price seems apposite. Unless a definition of the meaning of " value " is included in the next Finance Bill, it may be necessary to settle the point on appeal in individual cases, bearing in mind that, although the decision of one body of General Commissioners is not necessarily followed by another similar body, the Special Commissioners are always consistent.

In the same rule it is provided that moneys not required for the purpose of the business are to be left out of account. As was the case with E.P.D., this provision will give rise to many appeals, as it is on a question of fact. Presumably the words " within a reasonable time " should be added, as it would be impossible to prove that certain moneys would *never* be required. A fair test seems to be whether or not there is a likelihood of the money being required within a reasonable period of the end of the accounting period, having regard to the facts as they then stood. In dealing with standard periods, care must be taken to ignore subsequent developments which could not have been foreseen at the relevant dates, although subsequent events may be useful evidence of the reasonableness of the view that could fairly have been taken at those dates. A " limited period " view was adopted for E.P.D., and the question will now, as then, turn on the net working capital requirements, taking into account increased costs, etc.

BORROWED MONEY

Bank overdrafts will give rise to some interesting calculations in the computation of capital. Exact calculations would be so cumbersome that in most cases approximations will be an acceptable compromise in calculating the average date on which the capital was introduced or withdrawn.

PROFITS IN CAPITAL COMPUTATIONS

As mentioned in our February issue, the profits or losses to be taken into account in the capital computation will normally be the figures as adjusted for E.P.T. Capital Rule 4 provides that profits or losses shall, except so far as the contrary is shown, be deemed to have accrued at an even rate throughout the period. To arrive at the true increase or decrease in capital, however, the adjusted profits or losses will themselves require adjustment in many cases. Each item added back must be considered on its own merits. If the item is disallowed as being capital expenditure charged to revenue, it will usually represent capital employed in the business, and require no further adjustment. If, however, it is an expense disallowed as not laid out wholly or exclusively for the purposes of the trade, but creating no enduring benefit, it must be deducted from the profits or added to the losses (as adjusted for E.P.T. purposes), as the money spent is no longer employed as capital. The cumulative effect of such adjustments over a period of years must not be overlooked. Depreciation will be adjusted in the capital computation in arriving at the cost price (or its equivalent) of the assets. Likewise, reserves, such as those made for bad debts, will be adjusted, as only such reserves as are allowed as deductions from profits can be deducted in valuing the assets.

Similar principles must be applied to the items on the credit side of the profit and loss account, which are " debited back " in adjusting the profits.

INCOME AND CHARGES TAXED AT SOURCE

In adjusting accounts for E.P.T. purposes, care must be taken to deduct annual payments gross. Where these have been charged net in the accounts the income-tax must be added to the net charges before deducting them from the profits as adjusted for Schedule D, Case 1 purposes. Similarly, where investment income has to be adjusted, for example, as a deduction from interest on borrowed money, the gross interest must be computed.

PARTNERSHIPS

Unlike income-tax, E.P.T. must be regarded as an expense of the firm in arriving at the share of the partners in the firm's profits. The tax is on excess profits, and must therefore be borne in the profit-sharing ratio, irrespective of any partnership salaries or interest on capital.

This is easily proved : the division of the standard profits will take into account salaries and interest, any balance of the profits after deducting salaries and interest being shared in the profit-sharing ratio. It

follows that any increase in profits must be shared in the profit-sharing raito.

Amalgamations

After amalgamation there is only one business, assessable as such. If the amalgamation took place after March 31, 1939, the assessment on the new owner will proceed as if the businesses had always been one, and the standard profits will, therefore, be computed by reference to the standard period showing the most beneficial combined profit (taking into account the effect of variations of capital). There is a qualification to this statement, however, since a deficiency attaches to the person carrying on the business rather than to the business itself, with the result that the amalgamated business will not get any benefit from a deficiency of any of the businesses which it acquired, nor will it be able to obtain relief by setting a deficiency made after the amalgamation against excess profits made before the amalgamation. Similar results will follow an amalgamation after June 30, 1936, and before April 1, 1939, if the Commissioners are satisfied that there is no substantial change in the nature of the business.

Working Proprietors and Minimum Standard

A working proprietor, in the case of a partnership, is any partner who has worked full time for more than half the chargeable accounting period in the actual management or conduct of the business. In the case of a company, a working proprietor is any director who owns not less than one-fifth of the share capital of the company, and who has worked full-time for more than half the chargeable accounting period in the actual management or conduct of the business. It appears that the holding of over one-fifth of the share capital and working full time must be contemporaneous, and a director who, although fully employed for over half the period, only acquired his necessary share qualification near the end of the period would not rank as a working proprietor. This is not free from doubt, however. It will be noted that working over half-time for the whole period does not qualify the partner or director as a working proprietor. A further interesting point is that the reference is to share capital, not, as in most definitions under the Act, to ordinary share capital. The minimum standard of £750 per working proprietor with a maximum of £3,000 and a minimum of £1,000 applies only to a partnership or a company controlled by the directors. In all other cases the minimum standard is £1,000.

Choice of Standard Periods

As the Act allows the taxpayer to choose his standard for each chargeable accounting period, calculations on the alternative bases allowed will be necessary for each period. The effect of alterations in capital employed, as already emphasised in Accountancy, may make it desirable to switch from the minimum standard to a standard period standard, and back again as the years come round. The " percentage of capital " standard applies only to businesses commenced, or assessable as commenced, after July 1 1936 ; this also is subject to the alternative of the minimum standard.

Annual Payments, Rent, Etc., Paid to Persons Carrying on the Business

There is no restriction on the deduction of these payments such as is imposed for N.D.C. Where the payment is wholly and exclusively for the purposes of the business, it is an allowable deduction. The restriction in respect of artificial transactions must, however, be noted in this connection, and any " switch " of a partner's capital to loan account, or any unduly high rate of interest on loans from partners or directors, would undoubtedly be challenged.

The Accountant from My Viewpoint

By SIR ERNEST BENN, C.B.E.

With the aim of showing the accountant how others see him, we published last August an article by an eminent K.C., under the tille, " The Accountant from My Viewpoint." This month we have asked Sir Ernest Benn, the well-known business man, to write freely on the same subject, and we publish his article exactly as received.

I wish, with all my heart, that the modern accountant did not exist, but then I also wish for the perfect world in which there is no need for the doctor. As it is, we humans are afflicted with disease and politicians and bureaucrats, and that being so there is nothing for it but to tolerate the doctor and the accountant.

When I started in business—now just fifty years ago—I gave a small honorarium to the bookkeeper of a neighbouring establishment who devoted a few evenings once a year to going over my day books and ledgers, and who wrote at the bottom of my balance-sheet the satisfactory words "audited and found correct."

In those days I was free to devote such brains as I had to the technicalities of my business, to the desires of my customers, and to the quality of my goods. To-day I leave those all-important questions to others, and I find the bulk of my brain power and most of my time engaged with solicitors and accountants in a struggle to see how I can continue to serve my fellow-men by way of trade, and keep within the four corners of Acts of Parliament and taxing schedules of every sort, kind and description.

I spend a certain amount of time with my directors and my managers, who have in the technical world of to-day sunk into secondary positions by com-

parison with my accountants and my solicitors. These professional friends are not exactly partners—they rank far above that. We all of us hang on their word and rely on their judgment.

I have the advantage over most of the readers of ACCOUNTANCY in that I can go back half a century, and the amazing waste of time and effort of the modern world is thus clearer to me than to those who have never known anything better.

I am not so bigoted a Victorian as to deny the possibility of some good purpose in all the technical hair-splitting which passes for business to-day. We may be in the midst of a greater industrial revolution; it may be that the machine is going in the future to do the work of man, and that man will have to keep himself employed by working in the manner of the accountant to settle under which schedule every particular part of the product should be entered. All the same, I am free to doubt. It is possible, for instance, that we are developing science, including the science of accountancy, to a point where it gets beyond the capabilities of the human brain, for it is the same human brain as ever with which we have to deal, and when we have reached that point the thing will break, and we shall have to start again in a simpler fashion.

Accountants, like solicitors, in my experience, can be divided into two classes. There are those who revel in complication, and are short-sighted enough to be contented with the fees and profits to be made that way. But there are also those—the better half of both professions—who are deeply conscious of the heavy tax on civilisation imposed by these things, and who do their very best to simplify, to ease and to mitigate.

Looking over my fifty years, I am conscious of an enormous change in public thought which, in itself, is responsible for a good deal of the work which accountants have to do. The theory that an Englishman was innocent until proved guilty was one of the main foundations of our character. The growth of the bureaucracy has very nearly destroyed that foundation. We are now in a world where everyone, innocent or guilty, has to conform with official requirements designed to discourage the cheat and the thief. Character counts for far less than it did, and counts, indeed, for nothing whatever against some technical breach of a Board of Trade regulation. In my judgment this alteration in the general public point of view due to the growth of the bureaucracy costs us dearly, for it limits the usefulness of all that great majority who in no circumstances whatever would be thieves or cheats.

These are the first thoughts that come to me in reply to the Editor, who asks for my views upon the accountancy profession. They constitute, I fear, a rather unsatisfactory answer to the question. I could write a totally different form of answer which would consist of an eulogium upon the profession as a whole and personal tributes to the several great men who adorn it. That, I take it, is not the sort of answer that the Editor desires.

Trustees under Deeds of Arrangement—
A Remuneration Point

BY A BARRISTER

It frequently happens that after a deed of arrangement has been executed by a debtor, a bankruptcy petition is presented against him and he is adjudicated bankrupt. Questions then arise as to how far, and in what circumstances, the trustee under the deed is entitled to be remunerated out of the estate for the work done by him.

Two cases must be distinguished, (*a*) when the deed of arrangement is avoided by the bankruptcy of the debtor; and (*b*) where the deed is void or is avoided for some other reason.

In the first mentioned case, the trustee under the deed has a certain limited statutory right to remuneration. Section 21 of the Deeds of Arrangement Act provides that "Where a deed of arrangement is avoided by the bankruptcy of the debtor, any expenses properly incurred by the trustee under the deed in performance of any of the duties imposed on him by this Act shall be allowed or paid him by the trustee in bankruptcy as a first charge on the estate." This section has been construed by the Court, and it has been held to mean that when a deed is avoided by bankruptcy the trustee under the deed is entitled to his out-of-pocket expenses, and his proper professional charges in respect of any work done in carrying out any of the duties imposed on him by the Act, but that the section does not give him any right to remuneration in respect of any other services rendered by him (*Re Geen* (1917, 1 K.B. 183)).

Apart from this Section there is no statutory authority for a trustee in bankruptcy to pay any remuneration to a trustee under a deed of arrangement. In a number of cases, however, it has been recognised by the Courts that, apart from the Section, remuneration may in certain cases be paid to a trustee under such a deed.

The remuneration of a trustee under a deed is also dealt with in the case of *Re Simonson* (1894, 1 Q.B., p. 433). In that case, the trustee in bankruptcy moved the Court for an order, that the trustee under a deed of arrangement and the debtor's solicitors pay to him certain money belonging to the estate of the debtor which they had collected. It was stated, however, on behalf of the trustee in bank-

ruptcy, that he was prepared, subject to the approval of the Court, to make the trustee under the deed and the solicitors an allowance in respect of their services to the estate ; and the Court was asked to fix a proper remuneration. In his judgment, Mr. Justice Vaughan Williams discussed the question of an allowance to the trustee under the deed and the solicitors. He said : " I am asked to say whether the trustee can properly make an allowance to either the accountant (the trustee under the deed) or the solicitors in respect of the work which they did. What I understand to be the rule as to that matter is this : If the trustee in the exercise of his discretion thinks the creditors have derived profit from the work which has been done at the direction of the debtor, he may adopt those services and pay for them. . . . He must exercise his own discretion, and, when he has done so, then if anyone feels aggrieved by the exercise of his discretion, the matter may be brought before the Court ; but the rule that I lay down, and intend that the trustee should act upon, is that he should be very strict in the matter of adopting services of this sort and paying for them, and he must go through the terms of the bill of costs and only pay for such items as he is clearly satisfied have been incurred in such a way as that a benefit to the extent of the charge has resulted to the creditors."

It should be observed that the learned Judge clearly considered that a trustee in bankruptcy had the power in the exercise of his discretion to pay remuneration to a trustee under a deed and other persons whose services at the direction of a debtor had benefited the estate.

The matter was carried a stage further by the case of *Re Foster* (72 L.T1., p. 364). In this case the trustee in bankruptcy applied to the Court for an order, that the trustee under a deed of arrangement pay over to him all monies in his hands belonging to the estate of the debtor, and the trustee under the deed claimed remuneration in respect of his services to the estate. The Court allowed him some remuneration, and indicated that where the services of a trustee under a deed had been of benefit to the creditors the trustee in bankruptcy should allow him some remuneration.

Doubt, however, as to whether a trustee in bankruptcy has a right in his discretion to allow remuneration to a trustee under a deed has now been raised by the recent case of *Re Zakon, ex parte The Trustee* v. *Bushell* (1940, 1 All E.R., p. 263). In this case, the debtor, one Zakon, executed a deed of arrangement which was duly registered by the trustee under the deed. A majority of the creditors in number and value did not assent to the deed ; and as this necessary assent was not given within 21 days of the date of registration, it followed from Section 3 (1) of the Deeds of Arrangement Act, 1914, that the deed was void, and had never been effective. After the deed had become void as aforesaid, the debtor was adjudicated bankrupt. The question which arose for consideration in the case was what allowance, if any, should be received by the trustee under the deed in respect of his services to the estate. Farwell, J., who decided the case, began his judgment by discussing the question of whether remuneration was payable to the trustee under the deed, under Section 21 of the Deeds of Arrangement Act, 1914. He pointed out that the deed had become void before the adjudication and that, therefore, the deed had not been avoided by the debtor's bankruptcy ; and Section 21 was not applicable. He then discussed the question of whether, apart from the section, the trustee was entitled to remuneration, and made the following observations :

" It is said that where a person has expended money or put himself to expense and as a result of his own exertions benefited the creditors, then the equity of the matter requires that he should have some compensation for what he has done. . . . I may say at once that I do not think that there is anything in the Act which would enable the trustee in bankruptcy to permit any such allowance to be made. I think it is a case where, if any such allowance is going to be made, or should be made, it is a case where it should be made by the Court, and by the Court only. In my judgment the trustee in bankruptcy in this case was amply justified in saying that he could not allow these deductions to be made and in coming to the Court as he has done for the assistance of the Court in the matter. But it does not follow from that, however, that there may not be jurisdiction in the Court itself to allow something to a person in the position of the respondent by way of compensation or otherwise for work or expense to which he has been put. In my judgment it is a case where the Court does only act under rather exceptional circumstances."

It is not clear from the terms of Farwell, J.'s judgment whether he considers that a trustee in bankruptcy ought never to make an allowance to a trustee under a deed on his own responsibility, but should always apply to the Court for direction or whether his observations were only intended to apply to cases similar to the one he was discussing (*i.e.*, where the deed is void not because of the debtor's bankruptcy but for some other reason). However, his observations are in their terms equally applicable, whether a deed is avoided by bankruptcy or is avoided or void for some other reason. It appears, therefore, that although it is clear that a trustee under a deed ought to be remunerated if his services have plainly been for the benefit of the creditors, it is not certain whether such remuneration ought to be granted by the Court, or by the trustee in bankruptcy in the exercise of his discretion. In these circumstances, if a trustee under a deed claims to be remunerated for work done other than in pursuance of his duties under the Deeds of Arrangement Act, 1914, the trustee in bankruptcy ought to protect himself by applying to the Court for its direction.

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E.P.T.—THE NEED FOR AMENDMENTS

If one thing about the coming Finance Bill is certain, it is that the Excess Profits Tax will undergo changes. On the question what those changes will be, nobody can say ; on the question what they should be, there are few members of the accountancy profession who would be unwilling to give voice. For the E.P.T. is rich in anomalies and inequities. During the past few months arguments for a reformation of the tax have been put forward from time to time in several different quarters. But we still awaited an authoritative recital of the objections to E.P.T. as it at present stands. This we have now received in a valuable report prepared by a Committee representative of widespread business interests which recently sat under the auspices of the Association of British Chambers of Commerce. It is noteworthy that Mr. Henry Morgan, Past-President of the Society of Incorporated Accountants, was Chairman of the Committee, and Mr. A. Stuart Allen, a member of the Society's Council, was one of the drafting members. For the benefit of readers of ACCOUNTANCY, we reproduce the report in full on following pages of this issue, and we recommend a thorough study of these pages.

The most obvious objection to the tax in its present form is the choice of the standard period. Many trading organisations have pressed upon the Government the view that the year 1938 should be included in the years which may be taken as standard. But the Government have already made it clear that there is very little chance that they will adopt this view, despite the argument that in many lines of industry and trade profits were sub-normal before 1938.

The Committee's recommendation on this matter wisely takes account of the Government's declared attitude. They do not urge the inclusion of 1938 in the standard period ; they confine themselves to the statement that " the representations to the Committee are so strong that the Committee recommend that such extension forward (of the standard period) should be permissible where a fair and reasonable standard cannot otherwise be discovered." Evidently they think that such a standard is most usually to be found. They go on to suggest that it should be sought (in cases where the present provisions of the tax work unfairly) by the fixing by Boards of Referees of percentages of profits varying from industry to industry as with the old Excess Profits Duty ; in cases of hardship by the precise computation of capital employed in a business so as to arrive at its normal earning capacity ; and, finally, by an elastic provision giving power to Boards of Referees to discover a fair standard of earnings where the provisions of the tax do not provide one.

Another main criticism of the tax concerns the anomalies arising out of the provisions for transferred businesses. At present, where after April 1 of last year the persons carrying on a business change, deficiencies below the standard earnings recorded before that date cannot be set against subsequent excesses, and, similarly, if tax is paid on earlier excesses, repayment cannot be claimed on subsequent deficiencies. As the Committee cogently remarks, this is tantamount to the levy of a transfer duty on sales of businesses—a duty disguised as Excess Profits Tax. While not wishing to suggest any amendment which would open the way to evasion of tax by transfer of businesses, the Committee consider that where after April 1, 1939, a business is converted into a private company, with no substantial change in ownership, the proprietors should retain the advantage of setting excesses and deficiencies against each other, as in income tax practice. Where a change in partnership occurs after the given date, the continuing partners should retain their appropriate part of any excesses or deficiencies between that date and the date of the change in partnership.

No part of the tax gives rise to more difficulties or contains more inequities than the section dealing with inter-connected companies. Some of the difficulties will be familiar to readers of this Journal who have followed our monthly contributions on the tax. The anomalies defy recapitulation in a short space. They mostly spring, however, from a fundamental misconception inherent in the whole of this particular Section, regarding the taxable liability of a group of companies. The Section demands that the group be treated *ab initio* as a single unit for taxation purposes, instead of allowing each company in the group to be deemed a single taxable subject up to the stage of final calculation of the tax. This misconception leads to such incongruities as the sacrifice by subsidiary companies of their most favourable standard years, owing to their being overridden by the choice of years made by the group as a whole ; to such innovations as the inability to charge a subsidiary company with the taxation which the parent company has to meet on its behalf ; to such indeterminacies as spring from the lack of the definition of the capital employed by a subsidiary. Nothing short of a radical revision of ideas will suffice here : each subsidiary must be treated individually right up to the final stage. For such a revision the report forcibly argues.

Many other suggestions, all to the point and all closely reasoned, are contained in the full report. He who runs may read. The Chancellor is provided with the co-ordinated views of industry and trade on his new tax. It only remains for him and his advisers to agree with the Committee's report as wholeheartedly as will the accountancy profession.

TAXATION

Excess Profits Tax

Proposals for Reform by Association of Chambers of Commerce

Following the announcement by the Chancellor of the Exchequer on October 2, 1939, that he was willing to consider representations for the amendment of the Excess Profits Tax, a meeting of representatives of various interests was held under the chairmanship of Mr. Henry Morgan, F.S.A.A., Chairman of the Finance and Taxation Committee of the Association of British Chambers of Commerce, to determine what steps should be taken. A joint Committee representing the principal trade organisations of the country was subsequently formed under the auspices of the Association of British Chambers of Commerce to consider proposals for amending the tax, and the Chancellor of the Exchequer stated that he much appreciated the attitude of the Association and welcomed their decision to set up the Committee.

The Joint Committee consisted of some forty-five members, representing widespread business interests, and it was under the Chairmanship of Mr. Henry Morgan, who in 1929-32 was President of the Society of Incorporated Accountants. The drafting sub-committee comprised a smaller number of the members of the main committee, among them being Mr. A. Stuart Allen, F.S.A.A., a member of the Council of the Society. Dr. W. H. Coates, an Examiner to the Society, was also a member of the drafting sub-committee.

On February 7, 1940, the Secretary of the Association sent the following letter to Sir Gerald Canny, K.C.B., K.B.E., Chairman of the Board of Inland Revenue :—

Following the request contained in your letter of January 12, I am instructed by Mr. Henry Morgan, the Chairman, to submit herewith the report of the Joint Committee, the formation of which was announced to the Chancellor of the Exchequer in Mr. Morgan's letter of October 4 last.

The Committee recognises that the actual outbreak of hostilities naturally led to the imposition of a tax of general application in subsitution for the Armament Profits Duty, which Duty was limited in its scope both by the nature of the profits on which it was levied but perhaps more importantly by the turnover of £200,000 the attainment of which was a condition precedent to liability.

This condition protected smaller businesses from an unfair burden of taxation on the results of progress and efficiency and it has been continuously impressed upon the Committee that in this important respect the Excess Profits Tax will be most harsh in operation. The case for alleviation is self-evident and I am requested to draw particular attention to the Committee's recommendations on this point under the heading Minimum Standard.

Since it has been recognised that amendment of the existing provisions is necessary for businesses in process of development, no recommendation on this point has been made pending advice as to the terms of the official amendment.

I am to add that the Committee will appreciate an opportunity for discussion of the report with yourself and, at a later stage, with the Chancellor of the Exchequer.

The proposals of the Joint Committee, contained in the report referred to in this letter, are so important that they are given below in full. An Editorial article on the opposite page also deals with them.

The Report

"Excess Profits" as a Taxable Subject Matter

Any Tax which imposes a levy on an increase of profits as between one period and another must have some mischievous economic effects. Enduring prosperity is immune from its incidence, while progress may be penalised whether it be due to efficiency, to natural development or to recovery from depression, commendable improvements suffering equally with fortuitous prosperity or profiteering. One effect must be to stifle enterprise and encourage waste, and in the absence of special provisions those industries which are most vital in time of war may be dealt a blow from which they cannot recover.

The duty of this Committee is to draw attention to those more injurious aspects that can and should be removed or mitigated, and to recommend amendments to that end.

The most striking feature of the Excess Profits Tax is that while it resembles the Excess Profits Duty imposed by the Finance (No. 2) Act, 1915, several important provisions which were valuable safeguards to the taxpayer ensuring the equitable incidence of the Duty have no counterparts in the present tax.

The reason for these important divergences may be found in the difference between the conditions existing in the years which came under review for the purposes of the Excess Profits Duty (1911-1921) and those now prevailing or which are likely to emerge in the near future. The Excess Profits Duty was an important fiscal instrument which made a very substantial contribution to the National Revenue. The steep and general rise in prices which was a marked feature throughout the last War caused a rapid progression of profits over the whole range of trade and industry and the Duty succeeded in diverting to the Exchequer a large part of the resultant harvest.

Declarations of Government policy, particularly that of the Chancellor of the Exchequer on Saturday, January 13, make it clear that the present intention is to avoid a rise in the general price level with its

inevitable consequence of subsequent collapse. It follows that a marked upward turn in the profits of trade and industry is not expected and hence purely as a fiscal instrument the Excess Profits Tax is unlikely to be comparable in importance to its predecessor. The possible relative smallness of the total expected yield may be a *prima facie* explanation of the absence of certain relieving provisions which were previously found to be necessary, but the duty of the Committee is to consider the impost from the point of view of the trader and taxpayer as well as its effect upon the whole trading community. It must be emphasised that anomalies and inequalities of incidence will press none the less hardly on individual businesses, and should be ameliorated.

Standard

All trades or businesses set up or commenced by July 1, 1936, can elect to adopt a standard of profits by reference to the actual results of a chosen period or periods but in no case is it permitted to take any single period of twelve months ending later than June 30, 1937. As an alternative there is a minimum standard profit of £1,000 or of £750 for each working proprietor with a maximum of £3,000.

For the Excess Profits Duty the normal Profits Standard was the average of any two out of the three immediate pre-War years with an alternative, under certain conditions, of the average of any four out of six pre-War years and a still further safeguard of a percentage standard if neither of the foregoing was fair. It is a notable feature of the present tax that no wider choice of years is permitted to businesses suffering from abnormal depression; the percentage standard is not available and further there is a gap of twenty-one months between the latest date on which a single standard year can end and the beginning of the first chargeable accounting period.

The strongest representations have been made to the Committee that the period from which to select the Profits Standard should be extended to approach more closely the beginning of the first chargeable accounting period. In the main these representations have been pressed by trades suffering from prolonged adverse trading conditions and there is much force in the argument. The Committee is naturally apprised of the attitude taken by His Majesty's Government in the House of Commons when the proposal for an extension forward of the Standard Period was being debated. The representations to the Committee are so strong that the Committee recommend that such extension forward should be permissible where a fair and reasonable standard cannot otherwise be discovered.

With regard to the absence of the percentage standard, the Committee have considered this at length and they are convinced that the percentage standard as adopted for the purpose of the Excess Profits Duty is the alternative likely to achieve the greatest measure of equity. They have perused the Debates in the House of Commons on this particular point and have taken note of the objections raised on behalf of the Government. While it may be agreed that the precise computation of statutory capital employed should be avoided wherever possible, they consider that in cases of hardship where no adequate standard is otherwise available, the taxpayer should be permitted to present computations of the capital really employed in the business at the beginning of the first chargeable accounting period and to claim that the appropriate statutory percentage on the figure so established should be taken as a reasonable measure of his normal earning capacity. They submit that the Government which in 1937 propounded the universal calculation of capital employed should not now proclaim this impracticable in a few cases and equally that the trading community that opposed the general principle can properly urge its limited application in the interests of equity and certainty.

In addition and having regard to the wide diversity of profit-earning experience in recent years the Committee considers it important that the relieving provisions of the Act shall be fully effective in practice and that no restraint should be placed upon the Board of Referees which may prevent their discovering a fair and reasonable standard of earnings for those whose standard years do not provide one. They therefore recommend that the wording of Section 13, Sub-Section 7, be amended to read:

> If on the application of the person carrying on the trade or business the Board of Referees are satisfied that the profits in the standard period were not an equitable measure of the earning capacity or that the volume of business was unduly small they may direct that the standard profits of a full year shall be ascertained as if the profits for the standard period were such greater amount as they think just.
>
> The proviso to the Sub-Section to be omitted.

Statutory Percentage

All trades or businesses commenced after the 1st day of July, 1936, are obliged to adopt as a standard the statutory percentage applied to the average capital in each chargeable accounting period. The statutory percentages are 8 per cent. for companies (not controlled by the Directors) and 10 per cent. for individual traders, firms and all other companies. These percentages are greater by 2 per cent. or 3 per cent. than the minimum percentages fixed by the original Excess Profits Duty Act. This Act recognised that the risks to capital employed varied according to the character and location of the business. Power was therefore given to the Board of Referees on proof of the facts to grant higher percentages to any class of trade or business.

Only if the principle is recognised that special risks and deferment of yield justify a higher return on invested capital can British overseas trade be maintained, and unless higher percentage rates are permissible for the purposes of the Excess Profits Tax new enterprises and expansion of existing undertakings will be discouraged.

It is apparent that established companies which have earned a high return on invested capital therein will effectively enjoy their full percentages for the purposes of the Tax. Under the existing proposals new businesses which have not yet attained the profit-earning stage will be subjected to severe discrimination, and the Committee urges most strongly that the power given to the Board of Referees for the purposes of the Excess Profits Duty should be revived for the present Tax

so that in a particular class of trade capital at stake may be assured of the expectation of a yield properly reflecting the earning capacity in that class.

Minimum Standard

The alternative minimum standards provided by Sub-Section 2 of Section 13 comprise a fixed figure of £1,000 for each business or £750 for each partner or each working proprietor (as defined) in the case of a company controlled by its directors. In the two latter cases there is a maximum of £3,000 in all.

Doubt has been expressed as to whether a trader who owing to the absence of profit in the standard years adopts the minimum standard would be able to apply to the Board of Referees under Section 13, Sub-Section 7. While it is assumed that it is the intention that this right should be available the Committee feel the position should be made clear.

The rigidity of these maxima would cause considerable hardship to many small concerns. To alleviate this position the Committee recommend that the figure of £1,000 should be substituted for the figure of £750 for each working proprietor and that the maximum of £3,000 should be eliminated; further that in every case the minimum should be attributed to the earliest available standard year and that an allowance in respect of increased capital be granted in each chargeable accounting period for the increase of capital by comparison with such standard year.

In addition to the foregoing the Committee submit that a graduated abatement would serve to reduce the number of small cases which would otherwise be subject to assessment and should ensure that modest progress is not unduly penalised. This proposed abatement might take the form of an allowance in each chargeable accounting period equal to one-quarter of the sum by which the profits of such chargeable accounting period fall short of three times the minimum standard attributable to the particular business. The continuing character of the Tax would probably necessitate an annual review of this abatement over all chargeable accounting periods.

Such an abatement would accord with the well-established principle of grading inherent in all existing forms of direct taxation.

The definition of working proprietor in Sub-Section 2 involves that a director of a company controlled by its Board of Directors who holds not less than one-fifth of the Share Capital of the Company shall be treated in the same manner as a partner in a firm. Since in an actual partnership any individual member of a partnership must be treated as a partner however small his interest it seems anomalous to impose any limitation (and certainly so high a one as 20 per cent.) in the case of a company which is being treated as a firm.

The Committee recommend that in any case where the status of an individual as a working proprietor is destroyed by the fact that he is on Active Service with His Majesty's Forces and thereby ceases to satisfy the condition at present laid down, he should none the less be regarded as continuing as a working proprietor for the purposes of the Excess Profits Tax.

It is necessary at this stage to refer for purposes of comparison to Rule 10 of Part I of the Seventh Schedule which also relates to companies controlled by their directors and limits their remuneration in any chargeable accounting period. In Rule 10 the only directors immune from the restriction are full-time directors holding less than 5 per cent. of the Ordinary Share Capital. The two Rules taken together therefore create a " no-man's-land " for directors holding more than 5 per cent. but less than 20 per cent. In practice this must be productive of anomalies which would be minimised by making the same proportion of share capital (say, 10 per cent.) operative in both cases.

Succession and Amalgamation

Section 16 deals with transfers of businesses or parts of businesses. In Sub-Section 1 the general rule is laid down that any change at any time in the persons carrying on the business is to have the effect of bringing that business to an end and of setting up a new business. This involves that where any such change occurs after April 1, 1939, deficiencies below the standard prior to the date of the change cannot be set against subsequent excesses; conversely that any Excess Profits Tax which is paid in respect of excesses prior to the date of the change is not available for repayment by reason of subsequent deficiencies.

The Section then proceeds to specify the cases in which the standard of the transferor may be available to the transferee. Where a change in a partnership occurred before April 1, 1939, the continuing partners may elect to adopt the standards of the partnership. For other changes in ownership occurring between July 1, 1936, and April 1, 1939, the transferee may apply to use the standard of his predecessor subject to proof that the business is not substantially different after the transfer. In all cases of transfer on or after April 1, 1939, there is the fixed obligation to adopt the predecessor's standard profits, and in particular an obligation to adopt the capital values of the assets of the predecessor without regard to the price which was actually paid for them.

The Committee feel that the principle of the Section is harsh and that the refusal to permit the right to carry forward the excesses or deficiencies prior to the date of purchase is out of place in a system which purports to tax increases in profit alone and adopts the business as the unit for the purpose of levying the tax. The effect of the Section is tantamount to levying a further transfer duty on sales of businesses in the guise of the Excess Profits Tax.

The Committee recognise, however, that the aim of the Section is to prevent the possibility of abuse by means of transfers of businesses at inflated prices or by means of transfers, the main motive of which is to utilise the accrued excesses or deficiencies of the business to be acquired. They therefore feel that some limitation is inevitable. But there are, however, two instances which call imperatively for exception from the general rule, namely, the conversion of a firm into a company where the ownership remains substantially the same after the change and—a more serious hardship—changes in the personnel of a partnership.

Private Companies.—Where after April 1, 1939, a business owned by an individual or partnership is converted into a limited company—the ultimate proprietorship remaining substantially the same—the

principle followed for Income Tax purposes should be applied for the purposes of the Excess Profits Tax, and the continuing proprietors should not be debarred from the benefit of excesses and deficiencies prior to the conversion.

Partnerships.—The Section as it stands involves that where a change occurs in a partnership at any time the continuing partners are precluded from having regard to results of the trading operations prior to the change except that where the change took place before April 1, 1939, they can elect to adopt the profits of the standard period. Where the change of personnel occurs on or after April 1, 1939, the procedure laid down must frequently involve serious hardship since the continuing partners are debarred from having recourse to any excesses or deficiencies that emerge prior to the change. It will be apparent that the death at the present time of a partner in a business liable to the Tax will serve to impose as the result of that calamity a greater liability than would otherwise be sustained.

The recommendation which the Committee proposes derives from the fact that a partnership is not a legal entity and they therefore recommend that where a change of personnel occurs on or after April 1, 1939, the continuing partners should be permitted to retain their appropriate proportion of any excesses or deficiencies emerging between April 1, 1939, and the date of the change. Only by these means can the continuity of the interest be preserved.

It is pertinent to observe in connection with partnerships that under Sub-Section 5 of Section 12 all trades and businesses carried on by the same persons are to be treated as one. Cases must arise in which an individual will be a partner in two or more firms and in addition may be carrying on business on his sole account. By the method of allocation advocated above and then by suitable aggregation of the appropriate shares resulting from the allocation, it will be possible to measure the true increase of profits accruing to the individual from the whole of his interests, and so to found his final liability on the net total result of his operations.

Principal and Subsidiary Companies

The problems which arise in connection with groups of interconnected companies are of particular rather than of general application, but as the whole subject is complex and the desirable amendments of Section 17 are extensive it has been thought more convenient to deal with this Section in Addendum "A" to this report.

Computation of Profits: 7th Schedule, Part 1 Allowances for Redundant and Obsolete Assets

Rule 3 is not exhaustive of all the assets the value of which is likely to be adversely affected by circumstances arising out of the present War nor of the circumstances which may have reduced the value of the assets. For example many patents may be of value only under War conditions, others may lose in value by reason of the War. To provide for the allowance of the proper relief it is suggested that the opening words of the Rule should be altered to read: "Where any buildings, plant or machinery or other assets have . . ." and further that the word "and" at the end of line 3 in Rule 3 (1) (*a*) should be substituted by the word "or." In consequence of this any taxpayer will be able to claim exceptional depreciation and the writing off of any excessive cost of assets solely by reason of conditions prevailing as a consequence of the present War. As a consequential amendment the words "in either case" five lines later on should be ommitted.

A particular instance of assets that will be so affected is the capital expenditure imposed by the Civil Defence Act, by the Ministry of Supply Act or incurred voluntarily for the protection of employees. In so far as such expenditure is not covered by grants already sanctioned, it should be made clear that Rule 3 permits the writing off of the expenditure over the life of the present Tax.

The Rule as it stands applies only to assets provided for the purpose of the trade or business after January 1, 1937. It is difficult to discern the reason for this discrimination involved in this date since assets previously acquired will in many cases be diverted or adapted and fully employed in present circumstances; further, at the date to be prescribed by Parliament it will be the assets of the greatest age and therefore of least efficiency that will first be discarded.

It has been strongly urged upon the Committee that the provisional allowance of 10 per cent. is likely to be inadequate and that the provisional allowance should be more closely related to the period officially adopted in the organisation of the national effort. The Committee's recommendation is therefore that the provisional allowance should be increased from 10 per cent. to 15 per cent. which, coupled with the normal allowance for Wear and Tear, should serve to reduce the original cost to a reasonable value by the date to be prescribed.

The wording of Rule 3, and in particular the words "provided for the purpose of the trade or business by the person carrying on the trade or business," does not appear to cover the possibility that the trade or business may be sold or transferred after the assets have been so provided. The title to the allowances should not be affected by any such sale or transfer and words should be introduced to cover this point.

A point not covered by any provision is damage to or destruction of trading assets by enemy action. The Committee recommend that all losses incurred from this cause should be allowable in the computation of liability to the Tax to the extent to which the trader is not compensated out of Public Funds or in any other manner.

The attention of the Committee has been drawn to the fact that the allowance for obsolescence or for renewals granted for the purposes of Income Tax is spasmodic in its effect and cases will undoubtedly arise where allowances have been granted in the standard years which in reality were attributable to earlier years, obsolescence being in effect a lump sum allowance to compensate for inadequate depreciation previously. To preserve a fair and true comparison it may be that in certain cases the spreading of such allowances will be justifiable and the Committee trust that this point will be dealt with equitably by administrative instruction.

RULE 10.—DIRECTOR-CONTROLLED COMPANIES AND DIRECTORS' REMUNERATION

The Committee are of opinion that the simple comparison provided for in the Rule is only likely to operate with any degree of fairness where the personnel of the Board persists unchanged throughout the standard years and the chargeable accounting periods. Wherever this static position does not exist anomalies and inequalities will be common and it is apparent that no simple expedient can operate reasonably or fairly in the almost infinite variety of circumstances likely to arise owing to the great popularity of the private company for the conduct of the smaller businesses of this country. The Committee are therefore unable to make any specific recommendations for amendment of the Rule, but it is their considered opinion that discretion should be granted permitting modifications both for the standard and the chargeable accounting periods to ensure a just comparison. The concluding words of Sub-Section 6 of Section 16 indicate the lines on which the Committee think it desirable to proceed.

It is conceivable that Companies coming within Rule 10 will desire to make application to the Board of Referees under Sub-Section 7 of Section 13 in order that the profits for the standard period may be fixed at such greater amount as the Board of Referees thinks just. The Committee consider it should be made clear that any higher standard so granted should be related to specific years in the standard period in order that it may be clear what is the amount of the remuneration of the directors in the standard period for comparison which Rule 10 itself contemplates.

RULE 5.—DOMINION TAXATION

The attention of the Committee has been drawn to the official practice in fixing the deduction for Dominion Taxation for the National Defence Contribution under the corresponding provisions for that duty. With the Excess Profits Tax at the rate of 60 per cent. the Committee urge that the existing practice should be re-considered and that against the profits of any chargeable accounting period the deduction allowable should be the Dominion Tax payable in respect of those profits and not the Dominion Tax for the corresponding Dominion Year of Assessment.

The Committee also wish to draw attention to the fact that for the purposes of the Excess Profits Duty any similar Duty payable in a Dominion was a set-off against the Duty itself. They recommend that a corresponding provision should be introduced on the present occasion, and that for this purpose where National Defence Contribution is payable as the minimum liability the liability to the National Defence Contribution should be treated as a minimum payment on account of Excess Profits Tax.

RULE 6.—INVESTMENT INCOME

Where dividends receivable by a Company are to be included in the profits for the purposes of the Excess Profits Tax, such dividends will frequently be payable out of profits already subjected to the Tax in the hands of the paying companies so that any true liability to the Tax on the receiving company must involve a measure of double taxation. To avoid the introduction of a principle which is repugnant to all concepts of equity the Committee recommend that the principle of the National Defence Contribution should be adopted for the purposes of the Tax and that dividends receivable from companies liable to the Tax should be eliminated both from profits in the standard and in the chargeable accounting periods with consequential adjustments of capital.

Following the same principle the Committee urge that it should be made clear that in no case can dividends receivable from a subsidiary company be deemed to be the income of the recipient company for the purposes of the Tax.

COMPUTATION OF CAPITAL: 7TH SCHEDULE, PART 2

The provisions as they stand are complicated and a number of anomalies arise in their practical application, but these are mainly of a detailed character. The Committee draw attention to the following:

Stock-in-Trade can be valued for purposes of the trading account at cost or market price, whichever is the lower, this being the accepted principle. Apparently under Rule 1 stock being an asset acquired by purchase must be valued at the price at which it was acquired.

A somewhat similar point will occur with uncompleted contracts, which presumably must be valued at cost for capital purposes, whereas under Rule 11 of Part I of the Schedule the appropriate proportion of profit must be taken into account in each period.

Borrowed Money.—It is presumed that the words "borrowed money" connote something different from debts incurred in the ordinary course of trade, *i.e.*, loans or funded indebtedness, but the point is not clear.

The raising of money on mortgage is frequently coupled with a redemption policy designed to redeem the total mortgage at the end of a period of years. Unless such redemption policies are treated as capital employed the trader adopting this method of repayment will be at a disadvantage by comparison with one who actually repays the mortgage by instalments.

Temporary Investments.—The Shipping Industry is an example of a trade where replacement of the main asset only occurs after a period of years. It is a common practice for sums equivalent to depreciation allowance to be invested in order to permit of the replacement of the asset at the most favourable time. Unless such investments are treated as assets employed in the business extraordinary anomalies must result.

Unremunerative Capital.—The Committee recommend that where the capital employed in the trade or business has only commenced to be remunerative, or fully remunerative, since the standard period, an amount equal to the Statutory Percentage, or where interest has been earned on the capital but at a rate less than the statutory percentage, an amount which would bring the interest earned on the capital up to the statutory percentage, as the case may be, shall be added to the profits standard.

TERMINATION OF THE TAX

The imposition of a Tax so analogous to the Excess Profits Duty of 1911/21 has naturally directed attention to the most salient as well as the most recent effects of the former Duty. With a comparative Tax the

interests of the Exchequer dictate that it be withdrawn in anticipation of any general fall in the profits of trade and industry whether brought about by the transition from war-time to peace-time requirements or from any other cause. Thus commerce and industry may have to face the aftermath of War with depleted resources and the resumption of peace-time activity may be hampered and delayed.

This aspect has been much pressed upon the Committee and a list of the more important of the losses which may be anticipated is set out hereunder :

Stock-in-Trade.—In many trades Stocks will be maintained at a high level in anticipation of a continuance of war-time demand and when peace intervenes the value of most stocks must fall. Raw material may in due course be absorbed into peace-time production but any finished or partly finished goods will become unsaleable except at a sacrifice.

Forward Contracts.—In large part these cover future stock requirements and the considerations of the previous paragraph apply.

Standing and Overhead Charges.—Organisations which have been adapted or expanded to meet war-time needs can only be re-adjusted gradually to peace conditions. Outgoings such as wages, salaries, rents, subsequently persist at the inflated level for a considerable period.

Wasting Assets.—With a comparative Tax wastage occurring more or less evenly over the whole period under review does not call for particular adjustment, but any expansion or intensification of production in the chargeable accounting period with the consequent acceleration of wastage calls for a special allowance. A notable example of this is found in the mining industry where additional production can only be achieved at the expense of the future profit-earning capacity ; this should be suitably recognised.

Deferred Repairs and Renewals.—Expenditure under this heading frequently has to be reduced to a minimum during war time and has to be made good thereafter, while rearrangement and reorganisation of plant and works to resume civil production is an important factor, particularly in the heavy industries.

The Committee recommend that as regards Wasting Assets and Deferred Repairs and Renewals provisional allowances should be granted for each chargeable accounting period to be subject to adjustment on proof of the facts at the end of the last chargeable accounting period.

It is impossible at this stage either to enumerate comprehensively the burdens that industry will have to shoulder after the cessation of hostilities or to suggest the means by which proper alleviation may be granted. The tendency must be for the Exchequer to protect itself by an early repeal of the Tax, but the Committee consider that authoritative assurances are called for to the effect that reliefs will be granted in due time such as will ensure that the total liability in each case shall be brought into true relation with the net amount of additional profits which may be enjoyed after all essential expenditure both during the War and its aftermath has been defrayed. Without a reliable assurance in this sense apprehension of a repetition of the disasters of the post Excess Profits Duty period must tend to prevent full development of the national resources for the prosecution of the War.

On behalf of the Joint Committee,

HENRY MORGAN, *Chairman.*
R. B. DUNWOODY, *Secretary.*

14, Queen Anne's Gate,
S.W.1.
February 6, 1940.

ADDENDUM A

PRINCIPAL AND SUBSIDIARY COMPANIES

1. *Aggregation*

Section 17 endeavours to deal with the special problem which is presented by groups of companies which work together as one economic unit. Such a group consists of a number of ostensibly separate businesses which are linked together to form a composite whole. For the purposes of the Excess Profits Tax it has been deemed necessary to depart from the principle that each company is a separate taxable entity.

The method adopted in the Section is to regard the whole economic unit as a single business and to levy the tax on the parent company on behalf of the constituent parts. The Committee fully approve the principle of aggregation but the application of it has been unhappy and will cause numerous anomalies which are onerous and unnecessary.

The rigid and artificial limitation that nine-tenths of the Ordinary Share Capital of any Company must be owned within the Group ignores reality since it rests neither on control nor on financial interest. Presumably any shareholdings of less than 90 per cent., although actually integral parts of the business group, are to be treated as investments.

The benefit given by the Section to this limited part of a group is the right to set the deficiencies of any components against the excesses of the remainder. There are, however, several drawbacks inherent in the method—for example :

A. An inferior and unfair standard.
B. Inability to have regard to any results of the subsidiary prior to the date on which it became a subsidiary, other than the results for the standard years.
C. Extension of the tax to profits which otherwise would not be within its scope.
D. Obligation to pay tax on profits which do not belong to the group.

These points are dealt with more fully below :

A. *Standard*

I. The principal company may choose a profits standard if it was formed before July 1, 1936.

(*a*) That standard must be the year or the average of two years whichever is better but only in the aggregate for all the subsidiaries. There may be subsidiaries for whom this standard is one which individually they would not have chosen and who are forced to sacrifice their best standard years.

(*b*) There will be subsidiaries which separately would have good grounds for making application to the Board of Referees for an improved standard. They are debarred from this way unless the group as a whole has grounds for making such application.

(*c*) If a subsidiary is acquired after the standard years the principal company is obliged to take over the results of the subsidiary for the standard years whatever they may be. It is true that the principal company can then make a new election of the years it will adopt for standard in the aggregate, but the acquired subsidiary may have sustained losses in the standard years. If, moreover, the subsidiary has made a successful application to the Referees for a special standard, it is by no means clear that the award would continue once it has become a subsidiary company. In any case it is apparent that any improvement in profits resulting from its association with the group would be wholly subject to the tax.

The method of computing capital automatically involves a reduction of capital employed in the principal company whenever it purchases the shares in the subsidiary for cash and this fact, together with the penalty of a bad standard, may prevent the developments which are economically desirable.

II. If the principal company was formed after July 1, 1936, no profits standard is available to the group at all although the subsidiary companies may have been old-established businesses. The standard will be 8 per cent. on the capital employed in the group in the chargeable years. The relief given by Section 16 (6) to a successor to a business is not open to a purchaser of shares.

This may be unintentional because it is contrary to the treatment of an amalgamation after April 1, 1939, but it is consistent with the idea of treating the group as one business. The business is not deemed to exist before it comes into being on the formation of the parent.

B. *Results Prior to Acquisition of a Subsidiary*

Although a principal company is obliged to adopt the standard of an acquired subsidiary, it may pay no regard to the results of that company between the standard years and the date on which nine-tenths of the Ordinary shares are acquired.

It may be that the acquired subsidiary has a deficiency in the chargeable years before it became a subsidiary. That deficiency lapses and cannot be carried forward after the date the company becomes subsidiary, even though it may earn increased profits on its own account.

Conversely the acquired subsidiary may have paid Excess Profits Tax for the chargeable years before it became subsidiary, but from the moment the company becomes subsidiary, no subsequent deficiencies of the company itself or of the group as a whole can avail to found a claim for the return of the tax.

This position is particularly inequitable where the principal company is already in possession of little short of the required nine-tenths of the Ordinary shares and hence had effectively suffered a proportion of the deficiency or borne a share of the E.P.T. in respect of its investment prior to the fatal day when it acquired the few additional shares which turned the investment into a subsidiary.

C. *Extension of the Tax to Profits which otherwise are Outside Its Scope*

The tax in principle applies to the profits of all businesses carried on in the United Kingdom or of businesses carried on by a person ordinarily resident in the United Kingdom, thus its scope is practically the same as that of the Income Tax. The Courts have laid down a clear understanding of residence and, in relation to businesses carried on abroad, have shown that the criterion of residence of a business is the place where the business is managed and controlled. The scope of the charging Section 12 is clear and familiar.

Section 17, which incidentally might be said to be a machinery clause, cuts across and goes beyond the scope of the charging section. Businesses which are resident abroad are to be regarded as parts of the business of the group which owns nine-tenths of the Ordinary shares in the companies which carry them on. This conception is not based on fact, is unfair, impracticable, and economically injurious.

It is not based on fact because the fact that the businesses are managed and controlled abroad proves that they are not part of the same economic unit as their shareholders. It is unfair because the profits have no connection with the economy of the United Kingdom but with the economy of the country where they operate and where they are in many cases already subject to local excess profits taxes. It is also unfair in that it charges the majority shareholders in respect of profits which do not belong to them. It is impracticable because it will considerably delay the collection of the E.P.T. The tax cannot be calculated until the total aggregate profits are known and the necessity of ascertaining the profits as adjusted for tax purposes of companies operating abroad, often in blocked currencies, with accounts which have not been laid out to provide the necessary information, must inevitably delay agreement of figures and the collection of the tax literally for years. It is economically unsound because the parent company will require, subject to currency restrictions, to get the maximum dividends it can obtain from the foreign companies to provide it with the funds to pay the E.P.T., and the financial handicap on the foreign business will be as severe as if they were charged with the duty.

D. *Obligation to Pay Tax on Profits which do Not Belong to the Group*

If a principal company owns nine-tenths of the Ordinary shares, the subsidiary company is relieved of E.P.T. and the total charge for the full excess profits of the subsidiary is laid on the principal company. There is no power to charge a proportion of the E.P.T. to the subsidiary. Even if possession of nine-tenths of the Ordinary shares carries voting control of the subsidiary, which does not apply in many cases, a majority vote would be ineffective to validate a resolution by the subsidiary company to accept a charge from the principal company. A minority shareholder could upset it in the Courts.

This means that the minority Ordinary shareholders and possibly Preference shareholders are effectively relieved of tax on excess profits enuring to their benefit, and the whole charge is laid on the majority shareholders in respect of profits they can never enjoy.

This aspect of aggregation is more inequitable in the case of foreign companies. Profits belonging to foreign minority Ordinary shareholders and third-party Preference shareholders cannot be said to be in any sense a subject-matter for a British tax. It is unfair

to require a British shareholder to pay tax on such foreign profits belonging to foreign residents. The injustice is not confined to the interests of minority Ordinary shareholders. In many countries the law permits a form of share which has no rights in the capital but has a right both to participate in the profits and in any surplus on liquidation. Such shares not being Ordinary shares, cannot be brought into account for the nine-tenth limitation, but they may hold a substantial share of the equity. Cases exist where the English company holds more than nine-tenths of the Ordinary capital but only a minority of the profit shares.

The obligation to aggregate the full profits and the full capital of a partly held subsidiary produces the anomalous result that a purchase of further shares, Ordinary or Preference, actually reduces the aggregate capital employed in the group. Conversely a sale of Preference shares, of Profit shares, or of Ordinary shares up to one-tenth has the effect of increasing the aggregate capital employed.

There is a further point which follows from the fact that the total E.P.T. charge is laid on the principal company. The principal company may be a holding company which has no Case I assessment for Income Tax or an assessment which is insufficient to permit the deduction of the E.P.T. charge. In that case the deduction of E.P.T. for income tax is not achieved.

This point can, however, be dealt with by administrative action by admitting E.P.T. to be a management expense for the purpose of a claim for repayment of income tax under Section 33 I.T.A., 1918. This is done for N.D.C. in similar circumstances. Alternatively, if power is given to the principal company to charge out the E.P.T. and the charge is recognised for income-tax purposes, the point will not arise.

2. *Computation of Capital*

The provisions for computing capital have been designed with a single business or company in mind. They are awkward and obscure in their application to a group of inter-connected companies, and if read in one way are in conflict with the provisions for computing capital on transfers of business and on amalgamations.

There is no specific direction as to the manner in which shares in subsidiary companies are to be treated in calculating the capital employed in the principal company. One is left to infer that they are regarded as investments, but against this view is the wording in Rule 3 that there shall be left out of account investments " the income from which is by virtue of the provisions of Part I of this schedule not to be taken into account in computing the profits of the trade or business." Part I does not mention income from shares in subsidiary companies but refers to the exclusion of income from investments. On the other hand, Section 17 directs that the profits of the subsidiary company are to be deemed to be the profits of the principal company. Therefore profits of subsidiary companies are taken into account and shares in subsidiary companies are not excluded by Rule 3 from the capital employed in the principal company.

From a practical point of view it would seem necessary to exclude capital employed in the subsidiary company from the capital employed in the parent company because it is a duplication of the same money. But this leads on to the next question as to how much should be excluded and on this there is diversion of opinion. It is the usual thing to find shares in a subsidiary company expressed in the balance sheet of the parent company at a different figure from the nominal value of those shares unless the parent company was the first subscriber. Sometimes they stand at a discount but usually they stand at a premium. This premium represents goodwill which would have been expressed as goodwill in the balance sheet of the parent company if it had bought the business instead of buying the shares.

It is essential that this goodwill should be retained in the computation of the capital employed in the group as would be the result if a consolidated balance sheet were drawn up.

The rules for computing capital can be read so as to exclude premiums on shares in subsidiary companies but it would be manifestly unfair and contrary to correct accounting to do so. The point is of great importance to a company which is dependent on a percentage on its capital for a standard and to a company which has acquired shares since the standard years. It may be necessary to disregard such goodwill created after April 1, 1939, in the same manner as is done on transfers of a business, but before that date premiums on shares in subsidiaries should be recognised to the same extent as purchased goodwill.

3. *Relation of Excess Profits Tax to N.D.C.*

Section 19 presents particular difficulty when applied to a group of companies. It speaks of the Excess Profits Tax and the National Defence Contribution without at any point indicating whose E.P.T. or N.D.C. In the case of a single business or company, it is obvious that there is only one E.P.T. But in the case of a group of companies there is one E.P.T. payable by the parent company but a limitless number of N.D.C.'s. The underlying idea of Section 17 is that the principal company is carrying on one business and by applying this thought to Section 19 the N.D.C. paid or payable by the separate units which constitute the E.P.T. group is to be compared with the E.P.T. payable by the principal company.

But there are numerous difficulties upon which no guidance is given, including the following :—

1. A principal company can aggregate for N.D.C. purposes companies in which it holds three-fourths of the capital. Therefore the N.D.C. paid by the parent company may include N.D.C. on profits and losses of companies which are outside the E.P.T. group which is confined to nine-tenths companies. There is no provision for apportioning this N.D.C.

2. A subsidiary company may be inside the E.P.T. group in one accounting period and outside it in another. The N.D.C. and the E.P.T. is to be compared for the whole of the three years April 1, 1939, to March 31, 1942, and for the whole group.

There is no direction as to whether the N.D.C. paid by the subsidiary is to be taken into account :

(*a*) when it is in the group in respect of a period when it was outside the group ;

(*b*) when it is outside the group in respect of a period when it was inside the group.

The subject is extremely confused but it is thought that here again it will be simpler and lead to less anomalies if each separate unit were treated separately for the purpose of making the comparison of N.D.C. and E.P.T. for more than one accounting period. If the following submission of charging out a proportionate part of the E.P.T. is adopted and if it were accompanied by a similar power to charge out a proportion of the N.D.C. in cases of elected companies, the figures for both taxes would be available for each unit. The comparison could then be made unit by unit for each year or broken year from April 1, 1939, to March 31, 1942, and the sum of the differences could be ascertained for each year by reference to those units which were in the E.P.T. group for the particular accounting period in question.

Submission

It is suggested that most of the above difficulties would find an automatic solution if aggregation were based on the method adopted where a company is a subsidiary company for part only of the chargeable accounting period of the principal company, that is, by treating each subsidiary company as a separate unit up to the final stage of calculation of the tax. Each subsidiary would be entitled to its own standard to make an application to the Board of Referees if necessary, to carry forward its own deficiencies, and to have available its own previous excesses for repayment on account of subsequent deficiencies. Companies managed and controlled abroad would automatically be outside the Act and retain their true character as investments. When the excess or deficiency for each has been separately computed, these can be aggregated to ascertain the net excess or deficiency which would be attributed to the parent company. In turn the parent company would be empowered to charge to each unit showing an excess a proportionate part of the net total excess.

There is one important proviso to be made in connection with this alternative method of aggregating the results of a group, namely, that the companies should still be regarded as members of a group when considering the nature of the business which they carry on. This would preclude the possibility of describing the business of a holding company, or a property company or an investment company inside the group, as a company whose business consists wholly or mainly in the dealing in or holding of investments, unless the business of the whole group is of that character. The functions they perform are merely incidental to the main business of the group and the fact that these functions are segregated in a separate company should have no more effect than if they were performed by a department of a company carrying on the main trade.

ADDENDUM B

POINTS FOR ADMINISTRATIVE ACTION

There are a number of incidental and consequential matters which have come before the Committee in the course of their deliberations, which they consider can be most conveniently dealt with by administrative action. These include the following :—

1. *Additional Wear and Tear Allowance of Plant and Machinery Due to Extended Hours of Work and Other Factors*

While for Income Tax purposes such allowances are granted, it is desirable to have an assurance that the same practice will be applied for Excess Profits Tax.

2. *Exceptional Obsolescence and Income Tax*

The allowances, both provisional and final, granted under Rule 3 of the first part of the Seventh Schedule for the purposes of the Excess Profits Tax should in equity be allowed for the purposes of Income Tax and the National Defence Contribution.

Again under Rule 3 it should be made clear that the words " as a consequence of war " will be interpreted to extend to losses inevitably incurred as the consequences of peace and the conditions arising thereout.

3. *Sales of Existing Businesses*

The provision in Section 16 that no regard is to be had to the consideration paid on the occasion of the transfer will have extraordinary effects if applied to circulating assets.

4. *Board of Referees*

Much of the evidence which can be laid before the Board of Referees under Sub-Section 7 of Section 13 could more conveniently be submitted by trade associations or other bodies, and the Committee hope that evidence from such bodies will be accepted by the Board of Referees and be deemed to be part of the case of individual traders in that class.

TAXATION NOTES

Lost Rent, etc.

Although by Section 204 of the Income Tax Act, 1918, relief is provided for lost rent in Northern Ireland, if claimed within one year after the end of the year of assessment, it is only by concession that such relief is given in Great Britain. In such cases the relief is not, as in the case of empty property, a discharge of a proportionate part of the Schedule A assessment, but is calculated by reference to the real loss, as in the following illustration :—

A property of a gross annual value of £80 is let at £90. The tenant absconds, leaving £30 unpaid. The relief would usually be calculated as follows :—

Lost rent			£30
Deduct Rent ...	£90		
Less G.A.V. ...	80		10
			20
Deduct Repairs allowance, one-fifth			4
Relief allowed on			£16

The repairs allowance is at the rate applicable to the gross annual value. Tax would therefore be collected on the net annual value, £64, less £16, that is on £48.

At the present time, blocks of flats and other properties are often not fully let, and relief is commonly

given by discharging the Schedule A tax except that applicable to the net rents received, as shown in the following computation :—

Rents received	£1,500	
Less Outgoings (rates, etc., paid by owner)	900	
	600	
Repairs allowance £20 + one-sixth of (£600—£100) ...	=103	
Reduced assessment ...	£497	

Removal Expenses

The current practice of the Revenue appears to be to allow the whole costs of removal except in so far as any expenditure on improvements or expansion of the business or its assets is concerned. This is a point of considerable importance in view of the evacuation of so many businesses.

Dividends as Earned Income

Dividends which are perquisites of office or employment rank as earned for the purposes of the earned income allowance. Examples are the income received from shares vested in trustees for the benefit of employees—where the employees have no ownership, but receive the dividends solely as additional remuneration for their services—or income from shares assigned by a company to a director under conditions that he cannot transfer the shares, and they revert to the company on his ceasing to be a director.

Quick Succession Relief

Relief from estate duty under this heading is only given in the case where estate duty has become payable a second time within five years on the death of the person to whom the property passed on the first death. It only applies to duty on land, or a business (not being a business carried on by a company), or an interest in land or such a business. Where only part of the land or business becomes liable on the second death, relief is given on that part. Being a relief from double taxation, it applies only to the value taxed on both deaths, i.e., the lower value. Except in the case of a strict settlement, property which has been sold or contracted to be sold does not attract relief, since what passes is then the proceeds and not the property itself. If property passes on several deaths, each within five years of a previous death, relief will apply on the second death of each pair.

The term " business " includes goodwill, plant and machinery and net working capital, but reserve funds separately invested and moneys surplus to business requirements must be excluded. In the case of a partnership, the value of the share of the deceased partner ranks for relief. Where other allowances are also available, quick succession relief is calculated first.

In a case where fixed duty has been paid on a small estate on the first death, relief will be given on the second death ; where fixed duty is payable on the second death, it is first apportioned between the property attracting the allowance and other property.

A mortgage is not regarded as an interest in land for this purpose, nor is capital left in a business as a loan.

Service Pay

Many concessions are now coming to light in connection with the cessation of civil pay and commencement of service pay. For example, where an employment ceases on the employee entering H.M. Forces, the Revenue appear to waive their right to increase the penultimate year's assessment, although the ultimate assessment is adjusted to " actual." Moreover, they allow assessments of salary and service pay to be assessed on a " continuing " basis where it is to the subject's advantage. In other words, the subject is allowed the method of assessment most beneficial to him, irrespective of the letter of the law.

Void Allowances

Many of those who have evacuated their families have now stored their furniture with a view to saving income tax and rates. For income tax purposes, tax is not leviable for any part of a year of assessment during which the house is unoccupied (Schedule A, No. VII, Rule 4). The presence of a caretaker does not prejudice the claim, but furniture must be stored ; if the house remains ready for occupation, relief cannot be claimed. The relief is given, even where rent has to be paid, and cases have come to our notice where landlord and lessee have agreed to share the saving of tax in such cases. Attention to the position has been drawn in the House of Commons, and it is not unlikely that the next Finance Bill will contain a clause designed to remove this anomaly, and to restrict the relief to those cases where the landlord is losing income by reason of the house being unoccupied.

Earned Income Diminution Relief.

A problem which will shortly be exercising the minds of many practitioners is the application of the relief under Section 11, Finance (No. 2) Act, 1939, to the case of individually-owned businesses. Under this provision it is the " actual earned income " of the year 1939-40 which must be compared with the " earned income as assessed." No difficulty arises in the case of businesses making up accounts to March 31 or April 5, but the apportionment of accounts, where the financial year ends on another date, is not mentioned in the Section. It is understood that the Inland Revenue regard an ascertainment of the actual earned income on an apportioned basis as necessary, except that this will not be insisted upon in cases where accounts are made up

for a period of one year ending on December 31, 1939, or thereafter up to April 5, 1940. In many such cases the profit of the accounting year will be treated as being the profit of the year 1939-40 if the taxpayer so desires. But this is subject to the condition that he must agree to the adjustment of the year 1938-39 (where applicable) being taken on the corresponding basis. Where this method is not adopted, it will be necessary to await the completion of the next accounts before the liability for 1939-40 can be finally determined. In that case it may be possible to obtain a provisional reduction of the 1939-40 liability on the basis of what it would be if the accounting year were taken as equivalent to 1939-40, but it would undoubtedly not be permitted to revert to the latter basis if it is not originally elected.

Recent Tax Cases

By W. B. COWCHER, O.B.E., B.Litt., Barrister-at-Law

Income Tax—Cinema let furnished—Whether assessable under Schedule D on whole of difference between rent and annual value—Income Tax Act, 1918, *Schedule A, General Rule ; Schedule D, Cases I and VI.*

In *Shop Investments* v. *Sweet* (1940, K.B.D. January 29, T.R. 115), the issue was similar to that in *Windsor Playhouse* v. *Heyhoe* (1933, 17 T.C. 481), where the decision had been in favour of the Revenue. A cinema having been let furnished at a rent in excess of the value assessed under Schedule A, the Revenue claimed that the whole of the difference was profit assessable under either Case I or Case VI. The appellants had never before let a furnished cinema or equipped premises in order to let them furnished. They claimed that the rent received was wholly a rent covered by the Schedule A assessment. If liability was held to be under Case I, in view of the restriction of deducton under Rule 5 of Cases I and II, the Revenue contention would be correct. The Special Commissioners confirmed the assessment but their decision was reversed by Wrottesley, J.

He held that on the facts the appellants had not carried on the trade of letting cinemas. Case I being ruled out, the *Salisbury House* principle applied (1930, A.C. 432, 15 T.C. 266). The *Windsor Playhouse* case was incompatible with the later cases of *Alfred Leney & Co., Ltd.* v. *Whelan ; Marston's Dolphin Brewery, Ltd.* v. *Loughnan* (1936, A.C. 393, 20 T.C. 321). He, therefore, remitted the case, as was directed in the *Marston's Dolphin Brewery* case, for an apportionment of the total rent between house and furniture.

This case will inevitably create difficulties in the assessment of the profits of letting furnished houses. As to this, it is worthy of note that, whilst in a case of tenancy the net rent of the house is " income " and, where let furnished, so is the net rent of its furniture, in a case of owner-occupation the annual value of the house is " income " but the rental value of the furniture is not. A large proportion of assessments under Schedule D in respect of letting furnished houses infringe the canon of equality in taxation.

Income Tax—Partnership—Land development—Schedule D, Case VI ; Cases I and II, Rule 10.

In *Fenston* v. *Johnstone* (1940, K.B.D. January 26, T.R. 111), S. agreed to find the money to purchase a piece of land for development by the appellant. A relationship by letter was agreed whereby profits and losses were to be shared equally. S., however, stipulated in the letter that the arrangement " shall not constitute a partnership between us." A profit arose out of the adventure. Appellant was assessed upon the basis that his share was remuneration as the agent of S. ; and the assessment was confirmed by the Special Commissioners. Wrottesley, J., found for partnership and discharged the assessment.

Several cases were referred to in the argument and judgment and others could have been cited to the same effect. It is settled law that you cannot create a partnership by saying that there is to be one, or avoid it by declaring that one is not to be created. But, so far as the writer is aware, in no previous case of a single adventure has there been a judicial opinion that a declaration of no-partnership was inoperative. On the other hand, in *Moore* v. *Davis* (1879, 11 Ch. D. 261), a case remarkable for similarity of facts, Vice-Chancellor Hall, in deciding for partnership, thought that an unqualified declaration of no-partnership would have been effective, although the writer is unaware of any case where this opinion has been treated as authoritative.

Wrottesley, J., held that the dictum in question was obiter and to be contrasted with others in *Weiner* v. *Harris* (1910, 1 K.B. 285), and *Adam* v. *Newbigging* (1888, 15 A.C. 308). Such a disclaimer might affect the rights of the parties *inter se* but could not change the character of the relationship, at any rate as regards third parties. Where there is sharing of profit and loss the presumption of partnership can only be displaced by evidence to the contrary. The Revenue would have to try again. But, as to this, whilst every partnership is a business, every business is not a trade ; and to succeed under Case I may be equally difficult.

The case is useful in that it discredits definitely a view incompatible with an established principle of partnership law.

Income Tax—Schedule D—Deductions—Mills, factories, etc. Finance Act, 1937, *Section* 15 (5).

In *Boarland* v. *Pirie Appleton & Co., Ltd., Stemco Ltd.* v. *Hyett*, and *Stemco Ltd.* v. *C.I.R.* (1940, K.B.D. January 23, T.R. 107), the Court had to consider

Section 15 (5) of the Finance Act, 1937. Under it a tenant's right to the allowance only arises where under the covenants to repair " the whole burden of any depreciation of the premises falls upon him." Wrottesley, J., held that these words carry their ordinary meaning.

In the first case there was a lease in Scots form with tenant's liability for all repairs except those arising from " actual subsidence " or " general failure of structure." In the second and third cases the tenant had to keep the premises in full repair; but the landlord undertook to keep the boilers and heating apparatus in good order and condition. It was apparently not disputed that by " depreciation " in the sub-section was meant that arising from wear and tear and not that due to obsolescence, etc.; and, as under no repairing covenant does the tenant have to provide for this structural deterioration, the sub-section would be inoperative unless its meaning was cut down so as to give relief to a tenant under strict repairing covenants.

The objection to other than the ordinary interpretation was well expressed by Wrottesley, J., who said that if he decided in favour of the taxpayer, he would " bring it about that a tenant, who, unlike the owner, does not himself ultimately bear the loss due to depreciation, should, nevertheless, be given a measure of relief as though he did bear that burden."

The present interpretation is in accord with common sense; and the relief is economically sound as far as it goes. It is, none the less, not apparent why the owner-occupier of a factory should, *qua* owner, get an allowance for structural deterioration whilst the owner of a similar factory which is let on lease to a manufacturer does not. Sub-section 15 (5) cuts down the total relief formerly given by Rule 5 (2) of Cases I and II. It is suggested that the total relief should have been maintained, but that what was taken from occupying tenants should have been given to non-occupying owners.

Income Tax—Schedule D—Possessions out of the United Kingdom—Income Invested Abroad—Remittance—Whether Capital or Income—Schedule D, Case V, Rule 2.

In *Walsh* v. *Randall* (1940, K.B.D., February 2, T.R. 131), the appellant received income from an Indian partnership and Indian securities. This income was paid into a bank in Calcutta. On his instructions, one of the securities purchased out of partnership income was sold by the bank for £7,800, and a draft for £10,000 was sent to him in England and handed by him as a gift to a hospital. The balance of the draft, £2,200, represented taxed income. Assessed under Schedule D, Case V, Rule 2, upon the £7,800, appellant contended that the amount was a remittance of capital or, alternatively, that when received in the United Kingdom it was not his income. Upholding the decision of the General Commissioners, Wrottesley, J., rejected both contentions.

For the appellant, it was argued that whether the investment sold was capital depended upon intention; and the analogy was used of a company which could either retain undistributed profits as income or capitalise them by a distribution of shares. Wrottesley, J., accepted the argument of capitalisation but rejected the conclusion therefrom. Some of the dicta would seem to be open to question; but the foundation of his judgment was *Scottish Provident Institution* v. *Allan* (1903, A.C. 129, 4 T.C. 591), where, in the lower Court, the Lord President had said: " The interest was not kept separate from the other funds of the Institution in Australia and so invested there as to preserve its character as interest." In a caustic passage, he pointed out that the very argument which was there used to show that the character of interest or profit was retained was here claimed to show that it was capital. A resident " cannot by investing *for the time being* his income abroad change its character *vis-a-vis* the income-tax collector." The alternative argument was disposed of by reference to *Timpson's Executors* v. *Yerbury* (1936, 1 K.B. 645, 20 T.C. 155).

The words " for the time being " are the limits of the decision. The subject is left guessing as to the circumstances in which income potentially liable under the rule will become immune.

Income Tax—Bank interest paid to Guernsey branch of English bank—Overdraft obtained at branch—Whether interest payable in United Kingdom—Income Tax Act, 1918, Section 36; Finance Act, 1925, Section 19.

In *Maude* v. *C.I.R.* (1940, K.B.D., February 8, T.R. 139), the appellant, resident in Guernsey, obtained an overdraft at the local branch of the National Provincial Bank and paid interest there. Relief under Section 36 was refused by the board and subsequently by the Special Commissioners on appeal. Wrottesley, J., held, however, that the interest complied with the terms of the section inasmuch as, in the absence of a special arrangement, the appellant could have insisted upon paying at the headquarters of the bank in London.

Of the two arguments advanced for the appellant, the first was based upon " the enormity of double taxation." This involved leaving out the words " in the United Kingdom " where they first occur in the section. The second was the one accepted by the Court. Counsel for the Crown referred to the decision of the Privy Council in *R.* v. *Lovitt* (1912, A.C. 212) and of Mr. Justice Rowlatt in *Clare & Co.* v. *Dresdner Bank* (1915, 2 K.B. 576), as showing that the customer had no right to demand payment forthwith at any branch of a

bank. He seems to have argued that the converse held good, although the logic is not apparent. Wrottesley, J., summed up the authorities by saying that for the customer to have the right to walk into a branch of the bank and then and there demand payment was obviously quite impossible and absurd; and could not be inferred from the relationship. But, in the cases quoted, neither the Privy Council nor Mr. Justice Rowlatt had thought that there was "any rule by which the banker and the customer clients had, so to speak, automatically a local character."

At present, without the full report, it is not obvious why the claim was resisted. Everyone knows that payments *into* an account can be made at any branch or at head office. The decision will, none the less, be useful not only as regards Section 36 but will also remove an element of doubt in the application of Rule 2 (d) of Schedule C to coupons which are payable either in London or abroad.

Legal Notes

COMPANY LAW

Articles of Association—Mistake—Court cannot Rectify.

When there has been a mutual mistake, there is undoubtedly an equitable jurisdiction vested in the Court to rectify instruments which have failed properly to express the true intention of the parties. But such a remedy cannot be applied to a Company's Articles of Association. Bennett, J., decided this important point in the recent case of *Scott* v. *Frank F. Scott (London), Ltd.* (1940, W.N. 39). The only other reported case in which this question had been raised since the first Companies Act of 1862 was *Evans* v. *Chapman* (1902, W.N. 78). In that case rectification was refused, though it was proved that the Articles contained a mistake. In the present case the company was incorporated in 1926 under the Acts of 1908 to 1917, with a share capital of £10,500, divided into 10,200 preference and 300 ordinary shares of £1 each. The sole directors and signatories to the Articles were A., B. and C. (three brothers); each was the registered holder of 100 ordinary shares. On A.'s death, his widow obtained probate, and claimed as executrix to be entitled to be placed on the register in respect of the 100 ordinary shares held by A. at his death. On B. and C.'s refusal, she brought this action against the company for a declaration to that effect. There was a counterclaim from B. and C. for a declaration that on a true construction of the Articles, the plaintiff was bound to offer 100 shares to them as therein provided; they also counterclaimed for rectification of the Articles.

The action was dismissed and the defendants obtained their declaration. On the question of rectification, Bennett, J., said that this remedy could not apply to Articles by reason of the Companies Act of 1908. The share register was by statute open to inspection. There was no machinery for altering the company's file; but its alteration would be of vital importance in the event of rectification of the Articles. Copies of documents on the register, certified by the registrar to be true copies, were admissible in proceedings as legal evidence.

EMERGENCY LEGISLATION

Bankruptcy notice not complied with before passing of Courts (Emergency Powers) Act, 1939—Registrar's discretion to stay proceedings.

In *Re a Debtor (No. 13 of 1939)*, (1940, 1 All E.R., 227), the Divisional Court decided that the Courts (Emergency Powers) Act, 1939, is not applicable when a bankruptcy notice has been served and not complied with before the Act became operative. In May, 1939, the debtor in this case failed to comply with a bankruptcy notice served upon her. A receiving order was made against her by the registrar on October 23, 1939, after her attempt to show that inability to pay was due to the war. Between July 13 and September 13, 1939, she had unsuccessfully tried to sell an estate. The failure to complete the sale may have been due to the war. The registrar refused to stay proceedings. The Court found that he exercised his discretion properly and therefore it dismissed the appeal. The debtor's inability to pay her debts arose when she failed to comply with the bankruptcy notice and was therefore in no sense due to the war. Her subsequent difficulty in selling the estate was irrelevant.

Leave to distrain—Courts (Emergency Powers) Act, 1939—Court's discretion.

In the case of *A.* v. *B.* (noted in ACCOUNTANCY, January, 1940, page, 94), the Court of Appeal considered what principles should be followed in exercising discretion whether or not to grant leave to proceed to execution. It was indicated that although the Court was not exercising bankruptcy jurisdiction, in considering all circumstances it should take account of the debtor's other debts, if he submitted proper evidence of his financial position.

In *Metropolitan Properties, Ltd.* v. *Purdy* (1940, 1 All E.R., 188) the Court of Appeal had to consider the extent of judicial discretion under the Act. The appellant was the tenant of hotel premises and was in arrears of rent. On the landlord's first application for leave to distrain, the Master refused leave to levy distress. Tucker, J., gave liberty, but suspended leave subject to the tenant's making monthly payments.

The appellant had made a composition with the local authority for rates payable on the premises and, apart from paying rent and rates, he was in a position to pay his creditors in full. He asked the Court of Appeal to vary the order of Tucker, J., by releasing him from his obligation to pay rent and rates and submitted that if this were done his business receipts would enable him to carry on his hotel business. The Court of Appeal reviewed cases under the similar Act of 1914, when it was established that leave to distrain is essentially a question " for the absolute discretion of the learned judge." As regards the overruling of the exercise of that discretion, the House of Lords had decided that if the Court of Appeal found that a judge's exercise of discretion would result in injustice, it had power to use its own discretion, although the judge at first instance had not committed any error in law. But in the present case, the Court of Appeal did not take such a view. A reasonable attempt had been made to protect both parties. In the words of Goddard, L.J. : " Under the Act, the court, be it the master or the judge, is put very much in the position of a Cadi under the palm tree. There are no principles on which he is directed to act. He has to do the best he can in the circumstances, having no rules of law to guide him, and very often with no dispute as to the facts. . . . I do not think that this Court ought to interfere with the discretion which the Judge has exercised after a very careful hearing, unless it can come to the conclusion that he has done something unjust." The appeal was dismissed.

The Emergency Acts and Orders

In our November, 1939, issue we published the first instalment of a comprehensive guide to the war-time enactments and Orders which most concern the accountant. The series is brought up to date each month, and the fifth instalment is given below. The summaries are not intended to be exhaustive, but only to give the main content of an Act or Order, the full text of which should be consulted if details are required.

ACTS

Industrial Assurance and Friendly Societies (Emergency Protection from Forfeiture) Bill.

Industrial assurance policies, and life assurance policies effected with collecting societies and friendly societies, are protected from forfeiture while the owner is unable to pay premiums because of circumstances arising directly or indirectly out of the war. The policies must be for an amount not exceeding £50 exclusive of bonuses, and must have been effected before September 1, 1939, two years' premiums being paid. Policies already forfeited since the commencement of the war may be revived. The sum assured is to be reduced, if the outstanding premiums are not paid before a claim arises. Similarly, the sum assured is to be reduced, or in the case of endowment policies, the date of maturing is to be postponed, if the premiums are not paid within three months after the date appointed for cessation of relief.

ORDERS

CIVIL DEFENCE

No. 1913/*L.* 35.—*Civil Defence (References to Official Arbitrators) Rules,* 1939.

No. 1914/*L.* 36.—*Civil Defence (References to Official Arbitrators) Fees Rules,* 1939.

The Reference Committee for England and Wales constituted under the Acquisition of Land (Assessment of Compensation) Act, 1919, has laid down rules of procedure for arbitrations under the Civil Defence Act, 1939. References may cover compensation payable under the Civil Defence Act (not under other Acts) ; the " net ascertained cost of works " in factory premises occupied on short leases ; increases or decreases of rent under Parts III and IV of the Act ; and contributions in respect of works commenced before the passing of the Act. The Rules do not apply to the compulsory acquisition or hiring of land, or to compensation for personal injuries. The fees for applications to official arbitrators are laid down.

COMPENSATION

No. 107. *Interest on Compensation (Defence) Order,* 1940.

Compensation under the Compensation (Defence) Act, 1939, is to carry interest at the rate of 2 per cent. per annum. The previous Order, No. 1297 of 1939, which fixed a rate of 4 per cent., is revoked. The new Order came into operation on February 1, 1940.

DEFENCE

Defence Regulations

A further consolidated edition of the Regulations made under the Emergency Powers (Defence) Act, 1939, includes all amendments to December 11, 1939. The Regulations are grouped under the following sub-headings : General, Agriculture and Fisheries, Armed Forces, Finance, Grants and Loans, Local Government (Scotland), Savings Banks, Summer Time, and War Risks Insurance. Regulations on these subjects made under other Acts are not included. The booklet extends to 152 pages, including an index and a table of Acts of Parliament amended, suspended or applied by Defence Regulations.

EXCESS PROFITS TAX

No. 177. *Excess Profits Tax. Regulations, dated February* 5, 1940.

Rules of procedure are laid down and forms prescribed for applications and appeals to the Board of Referees under Sections 13 and 16 of the Finance (No. 2) Act, 1939.

EXPORTS

Nos. 103 *and* 166. *Export of Goods (Control) Orders,* 1940, *Nos.* 2 *and* 3.

The list of goods which may not be exported except under licence is amended by the addition of superphosphate of lime, phosphate rock, and tin.

(See ACCOUNTANCY, February, page 119.)

FINANCE

No. 1858. (1939). *Order in Council under Section* 2 *of the Currency* (*Defence*) *Act*, 1939.

The use of postal orders as legal tender is discontinued.

No. 1795. *Defence* (*Finance*) *Regulations* (*Isle of Man*) *Amendment* (*No.* 2) *Order*, 1939.

No. 1839. *Order in Council amending Regulation* 3 (1) *of the Defence* (*Finance*) *Regulations* (*Isle of Man*), 1939.

These Regulations are similar to those in force in the United Kingdom. Orders Nos. 1048, 1186, and 1404 are superseded.

No. 49 (1940). *Conversion Loan* (*Exchange or Repayment*) *Rules*, 1940.

Procedure is laid down to govern applications for conversion or repayment of the 4½ per cent. Conversion Loan, 1940-1944.

No. 72. *Currency Restrictions Exemption* (*Export to Channel Islands*) *Order*, 1940.

Bank notes, postal orders, gold, securities or foreign currency taken or sent from the United Kingdom to the Channel Islands is exempted from the restrictions imposed by paragraph 1 (a) of the Defence (Finance) Regulations, 1939.

(See ACCOUNTANCY, January, page 93.)

No. 213. *Acquisition of Securities Order*, 1940.

Acquisition of Securities. Treasury Directions.

The Treasury transfer to themselves holdings of sixty categories of securities issued by American companies, in respect of which returns have been made to the Bank of England under the Securities (Restrictions and Returns) Order, 1939. Documents of title and appropriate forms must be delivered, either directly or through a bank or stockbroker, to the Bank of England, London, or to one of the Receiving Banks in Belfast, the Channel Islands and the Isle of Man. Payment at a prescribed rate per share will be made on March 4, 1940, or seven clear business days after the receipt of the documents by the Bank of England, whichever is the later.

No. 207. *Government Stock Regulations*, 1939.

Rules are prescribed to govern the registration and transfer of Government stock in the books of the Bank of England which forms part of a trust subject to the law of Scotland.

IMPORTS

Nos. 1820, 1829 *and* 1874 (1939). *Import of Goods* (*Prohibition*) *Orders, Nos.* 11, 12, *and* 13, 1939.

Certain animal oils, etc., are added to the list of goods prohibited to be imported, and the section dealing with wood and timber is replaced.

No. 1892. *Import of Goods* (*Prohibition*) (*Consolidation*) *Order*, 1939.

Consolidated List of Goods prohibited to be imported except under licence, December 30, 1939.

The thirteen previous Import of Goods (Prohibition) Orders are revoked and replaced by the consolidation Order.

Nos. 34, 35, 92, 97, 176, 193. *Import of Goods* (*Prohibition*) *Orders*, 1940, *Nos.* 1, 2, 3, 4, 5, 6.

A number of amendments are made in the list of goods which may not be imported without a licence.

No. 58. (1940) *Import of Goods* (*Prohibition*) (*Live Animals*) *Order*, 1940.

Live cattle, calves, sheep, lambs and pigs may not be imported into the United Kingdom from Eire except at specified points or by one of the land routes named in the Schedule. The rail and road routes may only be used between certain hours.

(See ACCOUNTANCY, January, page 93.)

NATIONAL HEALTH INSURANCE

No. 1753/*S.* 126. *Medical Benefit Amendment Regulations* (*Scotland*) (*No.* 2), 1939.

Provision is made for temporary transfer of insured persons on the list of an insurance practitioner who is serving in H.M. Forces or in civil defence.

No. 1851.—*National Health Insurance* (*Reserve Forces*) *Regulations*, 1939.

No. 1852.—*National Health Insurance* (*Navy, Army and Air Force Auxiliary Services*) *Regulations*, 1939.

Detailed provisions are made for the continuity of insurance during emergency and war service of members of the Reserve Forces and of the Auxiliary Forces, including such bodies as the National Defence Companies, the Women's Auxiliary Forces, and Nursing Services.

TRADING WITH THE ENEMY

No. 87. *Trading with the Enemy* (*Channel Islands*) *Order in Council*, 1940.

No. 88. *Trading with the Enemy* (*Isle of Man*) *Order in Council*, 1940.

The provisions of the Trading with the Enemy Act, 1939, are extended to the Channel Islands and the Isle of Man, subject to certain adaptations and modifications.

No. 94. *Trading with the Enemy* (*Custodian*) (*Amendment*) *Order*, 1940.

Money which would have been payable to an enemy in a foreign currency is to be paid to the Custodian in English currency at the middle official rate of exchange on the date on which it became due.

No. 168. *Freights. General Licence.*

The London Chamber of Commerce may pay freights and other necessary charges to an enemy in order to obtain possession on behalf of the owner of cargo in a ship lying at a neutral port. Sums paid for charges other than freight must not exceed 5 per cent. of the original c.i.f. invoice value of the cargo. The previous general licence (S.R. & O. 1939 No. 1695) is revoked.

No. 105. *Transfer of Securities to enemy subjects. Licence.*

Company securities may be transferred to enemy subjects resident in Palestine.

No. 136. *Trading with the Enemy* (*Specified Persons*) (*Amendment*) (*No.* 1) *Order*, 1940.

Additions, deletions, and amendments are made in the list of persons deemed to be enemies for the purposes of the Trading with the Enemy Act, 1939.

(See ACCOUNTANCY, February, page 119.)

UNEMPLOYMENT INSURANCE

No. 1922 (1939). *Unemployment Insurance* (*Subsidiary Employments*) *Order*, 1939.

Employment for less than 28 hours weekly as a member of the Observer Corps or as an Auxiliary Watcher is declared to be a subsidiary employment.

No. 1944 (1939). *Unemployment Insurance* (*Emergency Powers*) (*Amendment*) *Regulations*, 1939.

A number of amendments are made in the Unemployment Insurance (Emergency Powers) Regulations, 1939.

Refunds may be made of contributions paid in error if they are employers' contributions in respect of persons over 65 or if application was made by September 6, 1939, and sufficient records are available. Other amendments relate to auxiliary forces and police reserves. Nursing auxiliaries, and persons in certain war occupations outside the United Kingdon, are insurable.

(See ACCOUNTANCY, November, 1939, page 41.)

WAR RISKS INSURANCE

No. 198. *War Risks* (*Commodity Insurance*) (*No.* 1) *Order*, 1940.

Premiums under the commodity insurance scheme are to be ¼ per cent. per month for the three months commencing March 3, 1940, with a minimum of 5s. for one month or 15s. for a longer period.

(See ACCOUNTANCY, January, 1940, page 94.)

Heavy Damages for Incorporated Accountant

The hearing in the King's Bench Division before Mr. Justice Hilbery and a special jury of seven in which Mr. Percy Frank Chaplin, chairman of the Emu Wine Co., claimed against The Hon. Thomas John Ley damages for alleged libel and against Mr. Keith Ley damages for alleged slander, was decided on February 15 in favour of the plaintiff, who received £10,000 and £2,000 damages against the two defendants respectively, with costs.

Both the libel and slander complained of accused Mr. Chaplin of paying to Mr. C. V. Best, Incorporated Accountant, a corrupt bribe of £4,500 with the object of making Mr. Best betray his principals in a certain share transaction.

Mr. C. V. Best also brought an action against Mr. Keith Ley in respect of a slander accusing Mr. Best of accepting the bribe, but following the decision in the case brought by Mr. Chaplin, this case was settled between the parties, judgment being entered for Mr. Best for £5,000 with costs. Mr. Best could not bring an action against the other defendant in the first case because Mr. T. J. Ley's allegation regarding the bribe was contained in a letter sent to Mr. Best and was not, therefore, published to a third party.

In their defence to the first case the defendants at first pleaded privilege and justification but withdrew the plea of justification on the second day. Mr. Keith Ley also denied that he spoke the words complained of.

Mr. G. D. Roberts, K.C., and Mr. F. W. Beney appeared for the plaintiffs; Sir Patrick Hastings, K.C., Sir William Jowitt, K.C., and Mr. Valentine Holmes for the defendants.

Mr. G. D. ROBERTS, K.C., opening the case on February 12, said that Mr. Chaplin succeeded to the family business of W. H. Chaplin & Co., wine and spirit merchants, and was chairman of the Emu Wine Co. In 1935 he formed the Ibex Development Co., Ltd., to erect a large block of offices in the Minories, E.C., with a capital of £160,000, £10,000 being in £1 ordinary shares and £150,000 in preference shares. The sum of £200,000 was borrowed from the Halifax Building Society.

The Hon. T. J. Ley was chairman of companies dealing in real property, including Regional Properties, Ltd. His son, Keith, assisted him in those companies.

In April, 1938, Regional Properties, Ltd., proposed to acquire the whole of the share capital of the Ibex Co. Negotiations were conducted by Mr. Chaplin with Mr. T. J. Ley and Mr. Keith Ley.

For the Leys, Mr. C. V. Best, Incorporated Accountant, of Lawrence, Hann & Best, was employed as accountant. A contract was concluded for execution on March 29, 1939. Regional Properties were to pay at once £64,000 for the ordinary shares in the Ibex Co., and between £150,000 and £156,000 for the preference shares before December, 1943. Mr. Chaplin and his associates retired from the Ibex board in favour of Mr. T. J. Ley and his associates.

Regional Properties, Ltd., paid Mr. Chaplin the £64,000 and released him from the building society guarantee. They had carried out none of the other terms.

Mr. C. R. Dormer, Chartered Accountant, partner in the firm of Cooper Brothers & Co., was the auditor of the Ibex Co. and met Mr. Keith Ley when the Ibex property passed to the Leys.

It was the defendants' case that on May 17, 1939, Mr. Dormer told Mr. Keith Ley that Mr. Best had been bribed by Mr. Chaplin to the extent of £4,500 and that Mr. Dormer actually showed to Mr. Keith Ley the receipt for that criminal payment.

Mr. Chaplin's case was that the whole thing was untrue.

The alleged libel was published on June 8, 1939, when Mr. T. J. Ley wrote to Mr. Best :—

> " It is just alleged to me that you had some secret arrangement with Mr. Chaplin and received a large sum of money for your services in the Ibex House matter. I really cannot believe it, but think you should know and be given a chance to deny it."

The solicitors for Mr. Best, who by then was with the firm of Allen, Baldry, Holman & Best, Incorporated Accountants, wrote on the day this letter was received to Mr. T. J. Ley, saying that the allegations were an absolute lie and asking for the name and address of his informant. This was not given.

" I hope you will be convinced, when you have heard the evidence," Mr. Roberts said to the jury, " that the defence has been supported by false statements and fabricated and forged documents."

In the particulars of how the money was paid the defence alleged that Mr. Chaplin drew a cheque for £4,500 in favour of the Emu Wine Co., which was endorsed or transferred to Jack Olding, Ltd., who paid the sum into their banking account. They drew a cheque for the same amount in favour of Cooper Brothers & Co., which was paid by them into their bank account. Cooper Brothers & Co. then paid the said sum to a woman nominated by Mr. Best—namely a Mrs. Riches, or someone of a similar name. This lady, it was alleged, on the instructions of Mr. Best paid to Mr. Lawrence, a retiring partner in the firm of Lawrence, Hann & Best, the sum of £3,250 and the balance of £1,250 to Mrs. Best.

There was not a word of truth in these allegations, Mr. Roberts declared.

On February 2, 1940, Messrs. Cooper Brothers & Co. and Mr. Dormer were served with a notice to produce all documents relating to a transaction with a Mrs. Pritchard. Neither had had any transaction with a person of that name.

Mr. CHAPLIN, giving evidence, said that Mr. Best received nothing from him in any shape or form. The allegation of the £4,500 commission was a fabrication. He said he had been told that a Mrs. Riches was a cook-housekeeper to Mr. Lawrence, a former partner of Mr. Best.

Mr. CECIL RHODES DORMER, Chartered Accountant, said that when he and Mr. Keith Ley lunched at the Savoy Hotel on May 17, nothing was said about Mr. Best having been paid a secret commission. He had no knowledge of the letter bearing the initials " K. L." and addressed to him stating :—

> " Thanks for showing me the Ibex commission receipt signed by Mr. Best."

Mr. Dormer denied having shown Mr. Keith Ley any such receipt.

Cross-examined, Mr. Dormer said he was "quite certain" that the commission receipt was not prepared in his office.

Mr. Dormer denied that he had told Mr. Keith Ley that the alleged receipt was signed in his presence by Mr. Best. He had never produced the receipt to Mr. Keith Ley or discussed it with him. The whole of the suggestions in regard to it were a complete fabrication.

At the conclusion of Mr. Dormer's evidence Sir PATRICK HASTINGS, K.C. (for the defendants), intimated that the plea of justification could no longer be persisted in.

Evidence was then given by Mr. ALBERT EDWARD WILSON, audit clerk to Messrs. Cooper Brothers & Co., that, while he was engaged in auditing the Ibex books at Connaught House in June, Mr. Keith Ley said to him: "I consider that Mr. Best has received a back-handed commission from Mr. Chaplin in connection with this business."

Mr. HAROLD ARTHUR LANE, manager of the Piccadilly branch of Westminster Bank, said he had no knowledge of the receipt for the £4,500 which, it was alleged, was lodged with the bank. There was no record of any such lodgment.

Mr. Justice HILBERY called for the production in Court of the alleged receipt and other documents. "They must remain in the custody of the Court," he said.

Mr. LANE stated that another document, signed with the name Burke and said to have emanated from Westminster Bank, did not come from the bank. There was no official of that name at the Piccadilly branch and the rubber stamp on the document was not that of the branch, though it bore the internal branch number.

He could not recognise the "Burke" signature.

Mr. WILLIAM HENRY SPIKINS, chief clerk at the Piccadilly branch of Westminster Bank, gave evidence concerning a document headed "Spiking." The initials on it, he said, were not his, and did not resemble his. He knew nothing whatever about the document.

Colonel MANSFIELD, the handwriting expert, stated in evidence that the signature on the alleged receipt was not that of Mr. Best. "It must therefore be a forgery," he declared.

He added that he had examined photostatic copies of the alleged receipt. Those copies, in his opinion, had been taken from two different negatives.

Mr. CHARLES VICTOR BEST, Incorporated Accountant, was in the witness-box less than a minute.

"Is there any truth whatever in the allegation that you received £4,500 as a bribe from Mr. Chaplin?" Mr. Roberts asked.

Mr. BEST: None whatever. I have not received a penny from Mr. Chaplin; neither has anyone on my account.

Mr. ROBERTS: You have seen the receipt that has been produced; is that your signature?—No.

Do you know anything about the document whatever?—No. I did not see it until long after this case was commenced.

Sir Patrick Hastings, counsel for the defendants, did not cross-examine Mr. Best.

Sir PATRICK HASTINGS, opening the case for the defendants, said that the whole case must depend upon which of two people the jury believed—Mr. Dormer or Mr. Keith Ley.

If the jury accepted Mr. Keith Ley's story that Mr. Dormer told him certain things, there could be no doubt that Mr. Keith Ley was perfectly entitled to believe them.

"You may think that this is one of the most amazing cases that has ever come before a Court," Sir Patrick observed.

It would be lunacy to put on record what investigation could immediately prove to be untrue. Could anybody who was not stark staring mad have invented such an account?

Giving evidence, Mr. KEITH LEY said Mr. Dormer was introduced to him in April, 1939, and they discussed the auditing of the Ibex books.

On a later occasion Mr. Dormer said his firm had a greater knowledge of facts about what was going on in the City than other accountants and "if I wished," continued the witness, "he would show me something which would open my eyes. I asked him what it was and he said he would not tell me then. I asked him again and he said, 'Perhaps I might show you some other time.'"

Mr. THOMAS JOHN LEY, who gave his address as Sloane Avenue Mansions, Chelsea, London, S.W., said that about May 17, 1939, he was told by his son that Mr. Dormer had shown him a receipt for £4,500 signed by Mr. Best. On June 8, witness wrote to Mr. Best the letter which had led to the libel action in the belief that what his son had told him was true.

Mr. Justice HILBERY: Between May 17 and June 8, what steps did you take to track down or verify the existence of this criminal conspiracy between all these persons?

Mr. LEY: I could do nothing. The information was given by Mr. Dormer under the seal of confidence and he could have said that he had not given it. I took it as a hint to us to get whatever evidence we could outside.

Mr. Justice HILBERY: Did you take the step, in so grave a matter, of going yourself to see the bank officials who had given information in that way?

Mr. LEY: I was quite satisfied that what my son was telling me was true.

Mr. VALENTINE HOLMES (for the defence) produced a letter which he said was signed by the secretary of the Bank of Australasia.

Addressed to Mr. Keith Ley, on the notepaper of the bank, the letter stated that the information obtained was enclosed, but the bank was unable to sign the report unless Mr. Percy Chaplin gave instructions to Westminster Bank to make the information available.

The enclosure with the letter stated that the Bank of Australasia had been told that "P. C." had deposited the receipt with Westminster Bank; that it had been seen by the Bank of Australasia and that it was dated March 30, 1939, and was signed "C. V. Best." The letter was signed "O. Curtis" as secretary to the bank.

Mr. LEY said that up to the time he heard Mr. Dormer's evidence, he thought his allegations in the defence were true. On the weight of the evidence, it was patent that the allegations against Mr. Best and Mr. Chaplin were false.

Mr. HOLMES: From beginning to end have you believed your son?—I have.

Do you continue to do so?—I do.

Cross-examined about certain of the documents produced during the hearing, Mr. LEY said that, in view of the evidence from the bank, he could come to no other conclusion than that they were forgeries.

Mr. ROBERTS: Have you any doubt that Mr. Best's signature is a forgery?—No doubt, after hearing the evidence.

Mr. LEY could not suggest any motive for the forgeries.

In regard to the Lines and Smith documents, Mr. Ley agreed that the statements were made in Mr. Ley's office on paper which his son provided, without the intervention of any solicitor, to protect the interests of Lines and Smith. Witness knew that was taking place and approved it.

Mr. ROBERTS: Did you instruct your solicitors to serve, last week, a notice on Mr. Chaplin to produce this forged receipt?—I have no recollection of giving instructions.

Do you agree that this is the crowning insult in this case?—I have no intention of insulting anyone, even if they are violently opposed to me.

Mr. ROBERTS conceded privilege and agreed with Sir Patrick Hastings that the questions for the jury were as to malice and whether the words, constituting slander, were, in fact, spoken.

JUDGE'S SUMMING-UP

In his summing-up Mr. Justice HILBERY said that in the whole of his long experience in the Courts, no jury had been called upon to listen to a case involving graver matters.

"What has been revealed in this case is the presence of a high degree of wickedness—somewhere," he added. "It has been admitted that the document upon which the whole of this terrible charge rested is a forgery. Where there is a forgery, there must be a forger.

"Forgery is a very, very grave crime. Other documents relied upon are admitted to be forgeries. One forgery is grave enough to earn, for the individual proved to be guilty of it, a long term of penal servitude, but we have been told, on evidence which has been unchallenged, that it does not stop at one forgery."

Mr. Justice Hilbery said that the charge of bribery was a foul and desperate one. Defendants put in a plea that it was true, but not one question was asked of Mr. Chaplin about it in cross-examination. The plea of justification was not withdrawn until Mr. Dormer had given his evidence. That was very important when the jury considered the state of mind of the defendants in regard to the matter.

It could not be too loudly proclaimed now, in view of the publicity which the case had attracted, that neither Mr. Chaplin nor Mr. Best was guilty of the criminal act of dishonesty which had been imputed to them.

It had been conceded, so far as the libel was concerned, that the letter of June 8 was privileged. To get damages, therefore, the plaintiff had to prove that the occasion was abused; that it was not used honestly and properly, out of some sense of duty.

If the slander were uttered or the libel written with any direct or improper motive, or with any ulterior motive, the occasion of privilege had been abused. The jury had to consider the conduct and possible interests of the parties at the time.

THE DECISION

The jury after thirty minutes' deliberation found that the letter of June 8, 1939, was not written without malice by Mr. T. J. Ley and awarded £10,000 damages against him. The jury also found that Mr. Keith Ley did not utter the slander without malice and awarded £2,000 damages against Mr. Keith Ley.

Judgment was entered accordingly.

Mr. V. Holmes pointed out that the investigation by the two banks in the case was carried out at the instigation of Mr. Ross, defendants' solicitor.

When Mr. PHILIP VOS, K.C., who held a watching brief for the National Bank of Australasia, sought leave to make a statement, Mr. Justice Hilbery observed: "I cannot permit it in the particular circumstances of this case and you will understand my reason when I tell you that I am impounding the documents in this case."

MR. BEST AWARDED £5,000

The action brought by Mr. C. V. Best, the accountant, against Mr. Keith Ley in respect of the slander uttered to Mr. Dormer on June 21, 1939, was called on and Mr. G. O. Slade, for Mr. Best, announced that according to terms reached between the parties judgment would be entered for Mr. Best for £5,000, with costs.

Mr. Justice Hilbery, who was informed that there were other terms of settlement, entered judgment in accordance with the terms endorsed on counsel's briefs.

ACCOUNTANTS AND LOSS OF PROFITS INSURANCE

A number of insurance companies have in the past included in loss of profits policies a condition requiring that an accountant should be appointed to assess the amount of a loss. Just over a year ago, the majority of companies—that is, the members of the Fire Offices Committee—agreed upon a standard form for loss of profits policies and the particular condition in question does not appear on this standard form. It is arguable that it would have been a better change to have inserted the condition in all policies in the future, instead of in those of certain companies only, as in the past. Certainly the complete elimination of the condition is a step backward, and it is difficult to see how it can be to the ultimate advantage of either party to the contract. Claim settlements under loss of profits policies are bound, in the great majority of cases, to be extremely complicated, despite the laudable attempt of the companies to simplify matters by providing a standard form of contract. These settlements turn, in nearly every case, upon questions of fact, which can only be settled by reference to the accounts, and this is pre-eminently the work of an accountant. It may be argued by the insurance companies that the assessment of the accountant may be binding upon the parties by law, and that this may upon occasions entail the acceptance by the company of a claim figure which it does not regard as satisfactory. But in reply to this point, it should be observed that the accountant in his investigation into a loss of profits claim is in an entirely independent position, and he will reach a result unbiased in either direction.

One feels that the insuring public, who, so far as we are aware, were not consulted when the standard form of policy was drawn up, would feel rather more secure if the assessment of a loss were to be made by an independent accountant, rather than by the insurance company itself or a professional loss assessor. No reflection on the integrity or capability or either insurance company or assessor is intended. But assessing loss of profit claims, unlike claims in all other branches of insurance, is solely a matter of extracting and computing figures from accounts and records—work in which accountants, but not insurers or assessors, are experts. Though the standardised policy contains no condition requiring an accountant to be appointed, the insuring person can nevertheless demand that a separate clause be added to this effect, and it is to be hoped he will do so. Even then, however, its wording will now be standardised so as to confine the accountant's work solely to the extraction of figures from the business records.

FINANCE

The Month in the City

Rail Agreement in Outline

For the investing public, the outstanding event of the month has unquestionably been the announcement at long last of the Government scheme of compensation for the railways. The agreement provides that Government traffic is to be paid for on a commercial basis, but since in wartime the State is by far the largest user of the lines, limitations are placed on the benefit which may accrue to the railways from this arrangement. Whether the limitations are sufficiently severe to afford adequate protection to the taxpayer is still a matter of controversy. Though the scheme is complicated in detail, and has given rise to endless market calculations of the prospects of individual stocks, its broad outline is straightforward enough.

The railways (which in this connection includes London Transport) are to receive a guaranteed minimum revenue of £40 million (divided in agreed proportions) plus £1 million of uncontrolled receipts from road transport investments and railways in Ireland. Up to £43½ million (excluding uncontrolled revenues) the railways retain the whole. The lines and the Government share equally in any excess over £43½ million up to a limit of £68½ million, at which point the Government retains the whole. This gives the railways a maximum of £56 million, equivalent in the case of the four main lines to standard revenues under the 1921 Act and in the case of London Transport to earnings of 5½ per cent. on the "C" stock. The minimum revenues are based on the average of 1935 to 1937 for the railways and on the year to June, 1939, for London Transport.

Spectacular Price Rise

Even on the assumption that the companies were earning only the minimum revenues, it was clear that the marginal stocks were definitely undervalued at the time of the announcement. Since subsequent dividend declarations have confirmed the general impression that earnings are already distinctly above the minima, the month has seen a spectacular rise in the junior stocks, ranging (as will be seen from the following table) up to more than 50 per cent. in the case of L.M.S. ordinary.

	Jan 31	Feb. 20	Rise
L.M.S. 4 per cent. Preference (1923)	49	57	8
Ordinary	14½	22¼	7¾
L.N.E.R. 4 per cent. 1st Preference... ...	44½	56	11½
2nd Preference ...	15½	21	5½
S.R. 5 per cent. preferred ordinary	70½	77¾	7¼
Deferred ordinary ...	13⅝	20⅛	6½
G.W. Ordinary	39¼	47½	8¼

Following the announcement of the agreement, London Transport "C" stock was unpegged from its absurd official mininum of 65, at which level the stock had been firmly frozen since the outbreak of war. An interim dividend of 1½ per cent. having been declared on the previous day, the stock closed on the first day of free dealings at 52½.

Markets and the Conversion Result

Apart from home rails, the chief market interest has been centred on gilt-edged. Industrials generally have remained lifeless. Rubber shares benefited to some extent from the sharp rise in the spot price to over 13d.—rather illogically, since that rise was due to the squeeze conditions resulting from the dearth of rubber for sale on this basis, while it is common knowledge that most of the estates are heavily sold forward at about 11d. per lb. for distant positions. Little improvement in that level is to be expected in view of the decision to leave the quota for the second quarter unchanged at 80 per cent. Tin shares, on the other hand, have received some attention on hopes that prices will be sent up by a sufficient cut in the quota—possibly by one-third, to 80 per cent. Developing gold mines have been depressed following the decision of the South African Government not to provide the finance needed to bring them to the producing stage. In the early part of the month the main influence on gilt-edged was the conversion operation discussed last month. As was shown by the Chancellor's announcement that applications for repayment in cash amounted to £99 million, as compared with conversions into the new 2 per cent. stock of £236 million, the amount of the stock in private hands had been generally under-estimated. As was foreseen, selling of the maturing Conversion 4½ per cent. stock for reinvestment of the proceeds to secure a higher income yield than that offered on the new stock had a stimulating effect on values generally, War Loan rising to within one point of par. The effect of the operation is not yet spent, for a further stimulus may be expected on June 30, when the cash repayment is actually effected, unless by that time the Treasury is drawing in subscriptions to a major Defence loan, which would immediately re-absorb the cash created.

Dissented Stock Neglected

Meanwhile, some of the methods adopted by the authorities to ensure conversion have aroused some discontent. The discount market, in particular, has not only been forced to take up large amounts of a comparatively long-dated stock, to the detriment of its liquidity, but in the absence of a reduction in Bank rate is having to carry this against clearing bank money at a rate of 1¼ per cent., which provides a wholly inadequate margin of running profit to com-

pensate for any temporary decline in capital value. Nevertheless, the pressure exerted by the authorities was so forceful that even after the fate of the operation had been determined most houses showed great reluctance to deal in the dissented stock, though this is precisely equivalent to a four months bill and, as such, would have formed a welcome addition to the supply of discountable paper, severely restricted by a succession of excellent Exchequer surpluses. Some individual transactions have, however, taken place at a discount rate of $1\frac{1}{32}$ per cent. Trustees might note that it definitely pays them to discount the stock instead of waiting for cash on June 30, for they retain the Coupon and at a cost of little more than 1 per cent. obtain the immediate use of cash which can be reinvested to secure in addition a return of, say, $3\frac{1}{2}$ per cent.

Dollar Securities Mobilisation

The first Treasury requisitioning of dollar securities is an interesting development of the month. Holders of sixty specified stocks must surrender them to the Treasury and, on March 4, will receive in exchange the sterling equivalent of the prices ruling on February 17, when the vesting order was made. Only the authorities have any precise knowledge of the sum involved, but market guesses range around £25 million. Like the cash repayments in connection with the Conversion operation, the reinvestment of these proceeds should benefit security values, though as the securities taken over are almost without exception equities, it may be that high-grade industrials, rather than gilt-edged, will benefit in the first instance. Since the object of the vesting is to ensure orderly liquidation at about the recent rate, the operation should relieve the American markets of any fear of selling pressure on United Kingdom account. The order has disappointed some holders who had hoped to be allowed to retain their stocks for the rise which is expected in due course, but there is no reason to feel that they have been unfairly treated. Any boom in Wall Street is likely to be due mainly to British Government purchases from American industry, and the present sterling prices include a substantial exchange profit resulting from the 15 per cent. depreciation in sterling.

Points from Published Accounts

Wartime Accounting Changes

Company accountants have to pay regard to some of the requirements of the censorship in preparing their war-time accounts, and chairmen's speeches to-day are necessarily less informative than in peace-time. There has, however, been no general change in the form of public companies' accounts. By contrast, the accounts of many statutory undertakings have been severely affected. The first railway report for 1939, that of Great Western, consists of a mere eight pages, compared with 28 pages for 1938. Accounts relating to capital expenditure during 1939 and estimates of further capital expenditure have been omitted, and accounts Nos. 10 to 18 dealing with railway receipts and expenditure and the results of ancillary businesses, together with the accompanying schedules of maintenance, rolling stock, locomotive and traffic expenses, etc., have also been deleted. Part 2 of the normal report, which consists of statistical returns, has been suspended in its entirety. This severely shortened form of accounts has, of course, been authorised by the Ministry of Transport, and apart from the desirability of suspending such schedules and accounts as might provide useful information to the enemy, the financial agreement which has now been reached between the railways and the Government would render unnecessary a considerable part of the detail normally provided in railway accounts. These changes have brought about a modification of the usual auditors' certificate. This states that, since the Great Western accounts are not prepared in the full form prescribed under Section 77 of the Railway Act of 1921, the statutory certificate is not, in the opinion of the auditors, applicable. The certificate, therefore, confines itself to stating that the accounts for 1939 are in agreement with the books and are properly drawn up " so far as existing conditions permit " so as to exhibit a true and correct view of the position of the company's affairs. The certificate ends with the auditors' opinion that the revenue shown in the accounts is available to meet the dividends proposed to be declared—a distinct change from the previous formula that the dividends proposed to be declared on the several stocks and shares were *bona fide* due thereon after charging the revenue of the year with all expenses with which it ought, in the auditors' judgment, to be charged.

Two Other Restricted Accounts

Two other cases in which war has curtailed the publication of facts usually provided in company accounts may be cited. The Gas Light and Coke Company's report for 1939 includes space for the usual statements Nos. 11 and 12, which show coal used and residual products made, together with variations of stocks, during the year. Normally these statements are of great value in interpreting the financial results of the company, but for the past year stockholders are merely informed of the total quantity of coal carbonised during the year 1939 and are warned that further details of coal used and residuals made will not be published for the duration of the war. The second war-time casualty is to be found in the Manchester Ship Canal Company's report for 1939. In 1938 the report included a statement showing, for each of the 45 years during which the Ship Canal had then been open, the amount of sea-borne traffic and barge traffic which it handled. This statement has been discontinued in 1939, owing to the need for secrecy regarding shipping movements.

Southalls, Birmingham

The new form of accounts adopted by Southalls (Birmingham), Ltd., is undeniably an improvement. The directors have provided a more informative profit and loss account, and the re-arrangement of the balance-sheet, which formerly was a rather undisciplined list of items, makes the company's strong financial position even more evident than before. The directors have changed their practice of paying dividends free of tax, and as a result of this change profits are now brought into the accounts subject to taxation and not after taxation as in earlier years. The consequence, as the directors' report points out, is that the profits are not comparable with those of previous years. Already a number of companies have changed their previous practice of making distributions free of tax and are instead paying dividends gross, and in the majority of these cases the accounting treatment of taxation has changed at the same time. The frequent result is that shareholders cannot compare the latest profit figures with those of the previous years. In at least one recent case, however, the directors provided revised comparative figures for the preceding year, so that a bridge was provided to the new basis of the profit and loss account. It is unfortunate that the directors of Southalls (Birmingham), Ltd., have not enhanced their improved accounts by following a similar course.

Westinghouse Brake and Signal

Another problem affecting comparative figures is raised in the Westinghouse Brake & Signal profit and loss account for the year to September 30, 1939. The single credit item is described as "profit on trading, dividends and interest, after providing for depreciation, all working expenses, financial charges and making reserves against contract losses, income-tax and National Defence Contribution." This amounts to £91,932, and compares ostensibly with a figure of £265,518 for the previous year. The disadvantage of an omnibus profits item of this sort is plainly illustrated in this case, for it is impossible to isolate the cause of the very severe fall which the accounts disclose. In fact, the two profits figures are not strictly comparable, for no provision for reserves against contract losses was apparently required for the year to September 30, 1938. In cases of this sort where some special factor is in large part responsible for a substantial movement in profits, it would seem desirable to indicate to the shareholder that the two profits figures which are set alongside each other in the report are not, in fact, properly comparable.

SWISS WAR PROFITS TAX

The *Receuil des Lois Fédérales* of January 17 contains an Arrêté of January 12 instituting a tax on war profits, which are defined as profits in excess of the average profits in, at the option of the taxpayer, two of the three years 1936, 1937 and 1938.

The rate of tax is 30 per cent. on that portion of the war profits which does not exceed 25 per cent. of the average of the profits for the years selected by the taxpayer and 40 per cent. on the remainder. In cases where the war profits do not exceed 10 per cent. of the average of the profits in the selected years no tax is payable.

LETTER TO THE EDITOR

DEAR SIR,—I am very interested in the letter signed S. G. Lange, published in the February ACCOUNTANCY, as it has raised a subject which I have long wished to bring to the notice of the Society. There is in London a very strong prejudice which has grown during recent years against women audit clerks. An employment agency confirmed this by informing me about a year ago that it is almost impossible for a woman to obtain a post as audit clerk in a firm of accountants. The following is my own experience. I am a senior clerk in a firm of chartered accountants, and obtained this position during the last war. When the Society opened its doors to women I was one of the first to qualify and become a member. During that war, owing to shortage of men, I was welcomed and given every opportunity of advancement, and, as an appreciation of my services, my employers retained me in the firm after the war, and also reinstated all their former clerks who returned when the war was ended. For several years past, however, it has been increasingly difficult for my employers to send me out on an audit. Their clients' objection is not to my capabilities, as they have never tested them, but to my sex. They refuse to have a woman as they maintain a woman's place is in the home, otherwise she is depriving a man who has come back from the war of a job. In consequence of this attitude my position has been very prejudiced, and I have been prevented from obtaining the advancement to which I otherwise would have been entitled.

The objection seems to me entirely unjust. Has not a woman as much right to live as a man? I lost, with many others, the chance of a home owing to the last war, and had to bear the whole expense of my training, and was obliged to study in the evenings over a period of nine years before I could finally qualify. The last few years have been most disheartening, and I would welcome co-operation in fighting this injustice.

A WOMAN INCORPORATED ACCOUNTANT.

London.
February 15, 1940.

IN PARLIAMENT

COMPANY LAW (NOMINEE SHARE-HOLDING)

Mr. Liddall asked the President of the Board of Trade whether, in order to prevent the misuse of the nominee-holding system, by which ownership may be masked, by avoiding Section 98 of the Companies Act, 1929, he will introduce immediately amending legislation, based upon Section 16 of the American Securities Exchange Act, 1934, by which quoted companies working under the United Kingdom Act of 1929 will be required to file a statutory declaration for record?

Sir A. Duncan: The question of nominee shareholdings has been noted for consideration when the amendment of the Companies Act, 1929, is under review, but I can hold out no prospect of any such review in present circumstances.

INCOME TAX AND SURTAX

Sir F. Sanderson asked the Chancellor of the Exchequer whether, owing to the increased taxation and the complexity of the method of arriving at the amount which is subject to direct taxation, necessitating the professional services of accountants, and as it is to the advantage of both the Treasury and the taxpayer that the amount subject to taxation should be accurate, he will consider between now and the next Budget allowing the deduction of accountants' fees before arriving at the net taxable income ?

Sir J. Simon : I must refer my hon. Friend to my answer given to him on December 14 last (see below).

Sir F. Sanderson : Does not the right hon. Gentleman consider that these current expenses are really charges against income, and will he not re-consider the position between now and the next Budget ?

Sir J. Simon : I will give proper consideration to any serious suggestion put forward, but as at present advised I do not think that I can agree with the hon. Member.

[**Sir F. Sanderson** on December 14 asked the Chancellor of the Exchequer whether, in view of the increasing complexity of income tax returns and the frequent necessity of employing accountants, he will consider allowing a deduction from the taxable income of such accountancy fees before arriving at the net assessment for taxation purposes ?

Sir J. Simon : I regret that I cannot adopt my hon. Friend's suggestion.]

COMMODITY INSURANCE SCHEME

Mr. Jagger asked the President of the Board of Trade whether he has yet reached a decision as to the rates of commission payable to insurance societies and companies for collecting the premiums on war risk commodities insurance ?

Major Lloyd George : It is not intended to pay to the companies and underwriters acting as the agents of the Board of Trade under the commodity insurance scheme remuneration on a commission basis. With the concurrence of my right hon. Friend the Chançellor of the Exchequer, my right hon. Friend has agreed to make, and the Board's agents have agreed to accept, payments on a scale so calculated as to do no more than defray their expenses for the work done.

Colonel Burton asked the President of the Board of Trade the amount now in the fund for the insurance of goods and merchandise ; whether any amounts have been paid out of the funds ; and the total amount of claims made thereon ?

Major Lloyd George : The balance to the credit of the War Risks (Commodities) Insurance Fund on February 20, 1940, was £18,259,375. Sums paid out under the concession made in regard to the September premiums and in respect of goods declared to be uninsurable total £5,898,900. On account of claims £53 has been paid, claims aggregating £11,145 are under examination and 46 further claims have been notified of which particulars have not yet been delivered.

THE MONTH'S PUBLICATIONS

Income Tax Reliefs.—By F. N. Bucher. Butterworth & Co. (Publishers), Ltd., London. Price 12s. 6d. net.)

This is a remarkably fine book. Mr. Bucher has managed to combine very full running references to statutes and cases with a lucidity of style and clarity of thought seldom found in textbooks on this subject.

The book deals with the subject from the angle of the reliefs available under various heads and is a most comprehensive review, amounting really to a textbook on income tax law. It is difficult to single out any chapter for special mention, but perhaps those dealing with husband and wife, dependent relative and business losses may be referred to as being among the best. Mr. Bucher shows a great familiarity with the practice of the Inland Revenue in applying the law and it is here that the book's outstanding value lies. The reader will find not only a lucid interpretation of the law, but lively paragraphs on just how it works out in practice.

In describing Revenue practice, Mr. Bucher records numerous interpretations which we usually regard as "concessions" by the Revenue, and he suggests that very often these should really be granted as of right and are in fact justified by a proper interpretation of the Acts. Accountants engaged in income tax practice know well how frequently the Revenue are able to follow their own interpretation because in no one case is the amount involved sufficient to induce the taxpayer to appeal and these cases eventually form the "practice." Mr. Bucher shows a most refreshing initiative in putting up attractive and ingenious arguments in such cases and challenges existing practice in many points.

The index is not very full and when another edition is called for, as we feel sure it will be, we hope the author will make it much more comprehensive.—JAMES. G. MCBURNIE.

BOOKS RECEIVED

Statistics and Their Application to Commerce. By A. Lester Boddington. Eighth Edition. (H.F.L. (Publishers), Ltd., London. Price 12s. 6d. net.)

Complete Practical Income Tax. By A. G. McBain, Chartered Accountant. Eleventh edition. (Gee and Co. (Publishers), Ltd., London. Price 8s. net.)

The Prevention of Fraud (Investments) Act, 1939. By L. J. Morris Smith, B.A., LL.B., B.C.L., Barrister-at-Law. (Jordan & Sons, Ltd., London. Price 10s. 6d. net.)

Loose-leaf War Legislation. Edited by John Burke. Part 12. (Hamish Hamilton (Law Books), Ltd., London. Price 5s. net.)

A Calculator for Dock Charges. Being a series of tables at rates from 3d. to 33s. 4d. per ton shown to the nearest penny. (Port of London Authority.)

STUDENTS

The Charge to Estate Duty—I

I.—Property Passing on Death

In the construction of taxing statutes, the question of primary importance is: Does the subject or subject-matter come within the ambit of the sections charging the duty? Unless the answer is in the affirmative, the machinery sections will not assist the Crown in any way. Unfortunately for students preparing for the accountancy examinations, little attention is given, in the main, to the charging sections in relation to death duties. We propose, therefore, in this and the succeeding article to examine the charge to estate duty.

For this purpose we shall confine our attention to Sections 1 and 2 of the Finance Act, 1894. The former imposes estate duty on all property which passes on death, whilst the latter brings into charge certain properties which are deemed to pass on death.

Taking Section 1, it is to be observed that nowhere in the Act is there any definition of the expression "passes on death." It must, therefore, be given its ordinary meaning which may be taken to be "changes hands." This is brought out in the following extract from the judgment of Lord Tomlin in *Attorney-General* v. *Lloyds Bank* (14 A.T.C. at p. 184):

> "Section 1 of the Finance Act, 1894, gives effect to the principle that whenever property changes hands on death the State is entitled to step in and take toll of the property as it passes without regard to its destination or to the degree of relationship, if any, that may have subsisted between the deceased and the person or persons succeeding. . . . The property which is envisaged as passing is the beneficial interest in property."

The clue to all problems under Section 1 is therefore: Does a beneficial interest change hands on the death? In simple cases there is no difficulty in answering this. If A owns a house, it must pass to someone on his death. To whom it passes is immaterial. Again, if property is settled on A for life, with remainder to B, the property must pass, in the sense that the beneficial interest in it changes hands, on A's death.

More difficult examples are provided in the cases of discretionary trusts and trusts for accumulation. If there is a trust during A's life of the income of a property for a group of persons fulfilling certain qualifications, the persons who are to share from time to time and the amounts which they respectively take being in the discretion of the trustees, followed on A's death by a similar discretionary trust during B's life of the income of the property for a group of persons fulfilling different qualifications, the title to the beneficial interest in the property as a whole changes hands on the death of A and passes on his death under Section 1, notwithstanding that one or more persons fulfilled both sets of qualifications (*Attorney General* v. *Burrell* (1936; 3 All E.R. 758)). Contrast this with the case where the income of a fund is directed to be divided into aliquot parts between a number of beneficiaries and there is a direction in the will or settlement that on the death of one of the beneficiaries his share is to accrue to the survivor or survivors. If originally there are three beneficiaries, then on the death of one of them one-third of the capital would pass, on the next death one-half and on the last death the whole of the fund (*In re Northcliffe*, 1929, 1 Ch. 327).

Coming to the case of property passing on the termination of a period of accumulation, *In re Hodson's Settlement* (55 T.L.R. 357) provides an example. There A settled a fund the surplus income of which, after meeting an annuity to B, was to be accumulated during the life of A and B. After the death of the settlor, if B should survive him, the income of the accumulations fund was to be paid to B during her life and on her death the original fund and the accumulations were to be held on trust for B's children. The settlor died, leaving B surviving him, and it was held that the accumulations fund passed on his death under Section 1, Finance Act, 1894. It will be noticed that on A's death no change took place in the beneficial interests in the capital of the accumulations fund so far as B's children were concerned, but their interest in the income of that fund was materially altered, in that they lost the right to require that income to be accumulated for their ultimate benefit. So far as B was concerned, her interest, which had previously been contingent on her surviving A, became an immediate interest in possession to continue for her life. On the ground that, whilst the beneficiaries were the same, before as after the death, the death brought one set of trusts of income to an end and shifted the beneficial interest in the income to the possession of B who (though, no doubt, previously a contingent beneficiary) had no beneficial interest in possession before the death, the Court held there was a "passing" under Section 1.

No doubt these examples are complex, but the student should examine them carefully, as it is only by so doing that he will appreciate the real meaning of the expression "property passing on death."

II.—Property Deemed to Pass on Death

Section 2 (1) of the Finance Act, 1894, brings into charge property "deemed to pass on death." Included therein is:—

(*a*) Property of which the deceased was at the time of his death competent to dispose.

(*b*) Cessers of interest in property taking effect on the death of the deceased.

(*c*) *Donationes mortis causa*, and in certain cases gifts *inter vivos*.

(*d*) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

Clauses (*a*) and (*b*) are, it will be observed, in terms which must between them cover practically all property which actually passes on a death. Section 2 (1), however, is not a definition section explaining Section 1, but is an independent Section (*Cowley (Earl)* v. *Inland Revenue Commissioners*, 1899, A.C. 198), or, put another way, the two sections are mutually exclusive. The distinction may be explained in this way. Take the case of property, of which the deceased was competent to dispose. If the property itself passes on his death, Section 1 is the charging section, whilst if the property does not pass, it is caught by Section 2 (1) (*a*). An example will, perhaps, make this clearer. Property is settled on trust to pay the income to A for life, then to B for life, and then the capital and income of the property is given to such person or persons as B by will or deed shall appoint. B dies in A's lifetime. The property itself will not pass on his death, but since he was competent to dispose of it (by means of the exercise of the power of appointment) it will be deemed to pass under Section 2 (1) (*a*). In effect, duty would be assessed on the reversionary interest expectant on A's death, since that is all B was competent to dispose of.

The charge to duty under Section 2 (1) (*b*) in respect of cesser of interest where the property itself does not pass is mainly concerned with annuities and rent charges. For example, if A by his will bequeathed an annuity of £1,000 to B, payable out of his residuary estate, then on B's death there would be a cesser of interest chargeable under Section 2 (1) (*b*). To measure the value on which estate duty is charged, resort is had to the "slice principle." If, for example, the income of the residuary estate is £10,000, then one-tenth of the value of the residuary estate at B's death would be deemed to pass by reason of the cesser of the annuity.

As to what constitutes a valid *donatio mortis causa*, and as to the gifts *inter vivos* caught by Section 2 (1) (*c*) —these questions are dealt with adequately in the text books, and we do not propose to discuss them here. But there is one point in connection with gifts *inter vivos* not generally appreciated by students. Normally, if the gift were made more than three years before death, there is no charge to estate duty in respect of it on the donor's death, but it is immaterial when the gift was made if the donor retains any interest in the property or any benefit by contract or otherwise, up to the date of his death or to a date within three years of his death. In such cases the property will be deemed to pass on his death, whatever the date of the gift. For example, A being the owner of £1,000 3½ per cent. War Stock, transfers it to B, and B, for his part, undertakes to pay an annuity of £35 or thereabouts to A for life: the War Stock would be deemed to pass on A's death. If, however, A more than three years from his death had released B from his obligation, duty would not be chargeable.

There remains the fourth sub-heading to be considered, namely, annuities or other interests provided by the deceased to the extent to which a beneficial interest arises on his death. The general purpose of the charge under this head is to prevent a person escaping estate duty by subtracting from his means during life, money or money's worth, which, when he dies, are to reappear in the form of a beneficial interest accruing or arising on his death.

A common example under this heading occurs in connection with life assurance. A effects an assurance on his life, and either nominates B as the person in whose favour the assurance is or subsequently assigns the policy to B, and continues to pay the premiums. On A's death a benefit arises to B which has been provided by A, and the moneys receivable under the policy will be deemed to pass on A's death. Suppose, however, that between the date of the policy and the date of the assignment to B, A had paid fourteen premiums, and thereafter eleven premiums were paid up to A's death, of which four were paid by A and the remaining seven by B. In this case four-elevenths of the policy moneys would be deemed to pass on A's death (*Attorney-General* v. *Meech*, 15 A.T.C. 619; *Inzievar Estates* v. *C.I.R.*, 17 A.T.C. 152). The decision in these cases turned on Section 11 (1) of the Customs and Inland Revenue Act, 1889, which is referentially incorporated into Section 2 of the Finance Act, 1894, and which provided that where the policy is partially kept up for the benefit of a donee, the charge should extend to a part of the policy moneys in proportion to the premiums paid by the deceased. This can only mean paid after the assignment, since it could not be said that premiums paid before that event were paid for the benefit of a person who was not then in contemplation.

Variations of the above example are provided by cases where A assigns to trustees a policy on his life and certain investments, the trust deed directing that the income from the investments is to be applied in paying the premiums under the policy. Here, on A's death, the whole of the policy moneys would be deemed to pass and also the investments, or the proportion thereof, set free by reason of the cesser of the premiums (*C.I.R.* v. *Scotts' Trustees*, 1918, S.C. 720).

Other instances of provisions made in lifetime and caught under Section 2 (*d*), Finance Act, 1894, are:—

(*a*) Articles of partnership provide that on the death of a partner an annuity shall be payable to the deceased partner's widow. Here an interest has been provided by the deceased in concert or arrangement with another person so that a benefit arises to the widow on her husband's death.

(*b*) Staff superannuation funds, under which benefits are payable to a deceased employee's relatives or nominees, provided:—

(1) There was a contract to this effect between the deceased and the employer or trustees of the fund;

(2) The deceased had been a contributor to the scheme or it could be said that the benefits under the scheme were part of the consideration for the employee's services; and

(3) The relatives or nominees have an enforceable right to the benefits.

Similar considerations apply to the benefit under the group life assurance schemes operated by some business firms.

(*To be continued*)

Society of Incorporated Accountants

RESULTS OF EXAMINATIONS

DECEMBER, [1939]

Passed] in Final

Order of Merit.

MORRIS, GORDON ALEC JAMES, Clerk to Hill, Vellacott & Co., London. (*First Certificate of Merit and First Prize.*)

BROWNE, NORMAN GEOFFREY, Clerk to Fitzpatrick, Graham & Co., London. (*Second Certificate of Merit and Second Prize.*)

ALBAN, ROLAND JOHN, Clerk to Alban & Lamb, Cardiff. (*Third Certificate of Merit and Third Prize.*)

SWINBURNE, ERNEST, Clerk to N. H. Walton (Laverick, Walton & Reed), South Shields. (*Fourth Certificate of Merit.*)

RAWLINS, HORACE MILMAN, Clerk to A. E. Hook & Co., Newport, I.O.W. (*Fifth Certificate of Merit.*)

HIGH, HERBERT GEOFFREY, Clerk to H. P. Gould & Son, Norwich. (*Sixth Certificate of Merit.*)

Alphabetical Order.

ACOMB, NORMAN, Clerk to M. W. Hustwick (Wade Hustwick & Sons), Bradford.

ATHIS, GEOFFREY FRANCIS, Clerk to H. T. Gore Gardiner, London.

BALL, RAYMUND, Clerk to Peat, Marwick, Mitchell & Co., London.

BANKS, THOMAS SUTCLIFFE, Clerk to Boyce, Welch & Co., Bradford.

BARNETT, PHILIP GEORGE, Clerk to Blease & Sons, Liverpool.

BEAVIS, EDWARD FRANK CAMPBELL, Clerk to Herbert C. Bunn (Wright, Fairbrother & Steel), London.

BENJAMIN, RUSSELL ERNEST, Clerk to Deloitte, Plender, Griffiths & Co., London.

BOCOCK, CECIL NORMAN, Clerk to Cooper-Parry, Hall, Doughty & Co., Derby.

BOOKER, HENRY, Clerk to Samuel Edward Short & Co., Chesterfield.

BRASSINGTON, ERIC, Clerk to W. B. Keen & Co., London.

BUTLER, EDGAR, Clerk to Edgar H. B. Butler, Worcester.

BYRNE, JOHN BERNARD, Clerk to Magee, Woods & Hillan, Dublin.

CHANDLER, FREDERICK WILLIAM WINSLOW, Clerk to Black, Geoghegan & Till, Guernsey, C.I.

CHAPMAN, GEOFFREY THOMAS, Clerk to James A. Chapman, Fleetwood.

CHARLTON, JOHN RAYMOND, Clerk to T. H. Rowland (W. T. Walton, Son & Rowland), Stockton-on-Tees.

CHENHALLS, ALFRED ALEXANDER, Clerk to Downes & Stewart, Glasgow.

CLARK, MAURICE PERCIVAL, Borough Treasurer's Department, Borough of Brentford and Chiswick, London.

CLARKE, ARNOLD, Clerk to Fred A. Fitton, Wilson, Smith and Martin, Manchester.

CLARKE, DONALD HARRY, Clerk to Rawlins & Tennant, Birmingham.

CLEGG, ARTHUR, Clerk to Pruddah, Eilbeck & Co., Liverpool.

CLENTON, FRANK WILLIAM, Clerk to Sharp, Parsons, & Co., Birmingham.

COLEMAN, ROBERT GRANT, B.A., B.Com., Clerk to Edward Baldry (Allen, Baldry, Holman & Best), London.

COLES, HAROLD GEORGE, Clerk to Richard Sheraton & Co., Brighton.

COPPER, HAROLD PHILIP TULL, Clerk to Hubert Leicester & Co., Worcester.

CORBETT, IVOR, Clerk to J. Wallace Williams (J. Wallace Williams & Co.), Cardiff.

COTTLE, KENNETH, Clerk to Thompson & Wood, Hereford.

COULSON, NORMAN CECIL (Samson & Coulson), London, Practising Accountant.

COULSON, THOMAS JAMES, Clerk to J. A. Kinnear (J. A. Kinnear & Co.), Dublin.

COX, BERNARD JOHN, Deputy Borough Treasurer, Weymouth.

CROOK, JOSEPH, Clerk to Proctor & Proctor, Burnley.

DACRE, JOHN HAINSWORTH, Clerk to John Gordon, Walton & Co., Leeds.

DARBYSHIRE, THOMAS HERBERT, Clerk to Theodore B. Jones & Co., Leeds.

DAS GUPTA, BINOD KUMAR, M.A.Com., B.L., Clerk to Rooke, Holt & Co., London.

DAS GUPTA, JNANENDRA NARAYAN, M.A., formerly Clerk to A. M. Roy & Co., Calcutta.

DAWES, ANDREW FRANK, Clerk to Lloyd, Attiwell & Co., Birmingham.

DAY, GEOFFREY KITSON, Clerk to Price, Waterhouse & Co., Leeds.

DONAGHY, NOEL AUSTIN, Clerk to Rawlinson, Allen & White, Belfast.

DOUGLAS, JOSEPH KENNETH, Clerk to F. A. Cawson, Webster & Co., Liverpool.

DUCKELS, LESLIE, Clerk to G. W. Townend & Co., Goole.

EDWARDS, DENNIS ROWLANDS (with H.M. Forces), formerly Clerk to Thomas Arthur Gittins, Oswestry.

EVANS, CYRIL MONTAGUE, Clerk to Bird & Potter, London.

FELSTEAD, EDGAR FREDERICK GEORGE, Clerk to Allan, Charlesworth & Co., London.

FIELD, LLEWELLYN CUTHBERT, Audit Section, Co-operative Wholesale Society, Limited, London.

FLETCHER, ERIC, Clerk to Groome & Ramsdale, Manchester.

FOSTER, JACK, Clerk to Perkins, Copeland & Co., Eastbourne.

FROST, FREDERICK, Borough Treasurer's Department, Brighton.

GARDNER, WILLIAM JAMES DOUGLAS, Clerk to Dixon, Wilson, Tubbs & Gillett, London.

GEACH, CEDRIC BENNEY, Clerk to Cunningham, Priestley & Co., Sheffield.

GERMAIN, HOWARD ROCHFORD, Borough Treasurer's Department, Sutton Coldfield.

GLEDHILL, EDWIN, Clerk to H. V. Wood & Co., Huddersfield.

GOODWIN, LEONARD (M. P. Ferneyhough & Co.), Stoke-on-Trent, Practising Accountant.

GRAY, PETER, Clerk to Chantrey, Button & Co., London.

GREYGOOSE, RONALD ERIC, Clerk to C. A. G. Hewson (Beatton, Hewson & Co.), London.

GRICE, ALBERT, Clerk to Peat, Marwick, Mitchell & Co., Birmingham.

HARBINSON, ALEXANDER, Clerk to Rawlinson, Allen & White, Belfast.

HARGRAVE, THOMAS BERESFORD, Clerk to Stafford, Rudkin & Co., London.

HARRIS, JOHN DAYMENT, Clerk to O. G. Taylor & Garbutt, York.

HARRISON, ERIC JOHN, Clerk to J. K. Pollitt (J. A. Harris & Co.), Barnsley.

HARTLEY, JOHN, Clerk to John E. Shaw, Rawtenstall.

HESFORD, CYRIL, Clerk to H. R. Evans, St. Helens.

HILL, ALBERT, Clerk to B. Sugden, Douglas, I.O.M.

HILL, ARTHUR, Clerk to Howard, Morris & Crocker, Portsmouth.

HODGSON, JACK, Clerk to Wm. Robertshaw & Myers, Keighley.

HOWE, LEONARD CHAPMAN, Clerk to Walter P. Thomas, London.

HUGHES, EDGAR, County Treasurer's Department, Denbighshire County Council, Ruthin.

HULBERT, GORDON ALAN, Clerk to Alban & Lamb, Newport, Mon.

HURST, JACK HORACE, Clerk to Thomas, May & Co., Leicester.

Final.—*Continued*

HUSTWICK, JOHN BRIAN, Clerk to Wade, Hustwick & Sons, Bradford.
HUTT, ERIC JOHN VILLETTE, Clerk to Herbert O. Barnsley (Silversides, Slack & Barnsley), London.

INGLE, EDWARD, Clerk to Auker, Horsfield & Longbottom, Bradford.
ISAAC, JACK ALONZO, Clerk to E. C. Condy & Co., Plymouth.
ISHERWOOD, LESLIE HOWARD, Clerk to F. W. T. Mills, Wakefield.

JOHNSON, HAROLD JOSEPH, Clerk to Geoffrey Nutt (Nutt, Horne & Co.), Derby.
JONES, EDWARD RAYMOND, Clerk to Harper, Kent & Wheeler, Shrewsbury.

KEEPAX, RAYMOND HENRY, Clerk to W. G. A. Russell & Co., Birmingham.
KELLETT, BRIAN PINDER, Clerk to W. E. Hughes (Brown, Topham & Partners), Liverpool.
KIRTANE, VITHAL BHAGWANT, B.Sc., formerly Clerk to Dalal & Shah, Bombay.
KISSACK, FRANK CLEATOR, Clerk to Shannon, Kneale & Co., Douglas, I.O.M.

LATHAM, THOMAS WARDLEY, Clerk to Britten, Kott & Co., Manchester.
LE MAITRE, KENNETH NOEL (with H. M. Forces), Clerk to Thomas C. Forster, Manchester.
LONGHURST, WILLIAM THOMAS CHRISTOPHER, Clerk to Baker & Co., Leicester.
LORD, HARRY, Clerk to J. W. Best & Co., Sheffield.
LOVELL, JACK, Clerk to Chown & Robins, Penzance.
LOWE, JOHN GORDON MICHAEL, Clerk to D. A. Newby (Hewat, Bridson & Newby), Alexandria.

MCEWEN, HENRY, Clerk to Reginald Hindley (Hindley, Hamer & Co.,) Manchester.
MCLAREN, ARTHUR VICTOR JAMES, Clerk to Hodgson, Harris & Co., London.
MAJUMDAR, HIRENDRA MOHAN, M.Sc., formerly Clerk to G. Basu & Co., Calcutta.
MALLINSON, WILFRED, Clerk to Sharpe & Sharpe, Huddersfield.
MANNING, FRANCIS GEORGE FREDERICK, Clerk to W. G. Kay & Co., London.
MARSH, WILLIAM EDWARD, Clerk to Stanley Marsh, St. Helens.
MARSHALL, HENRY, Clerk to Thomas Bell, Newcastle-upon-Tyne.
MILLER, ARTHUR, Clerk to Cecil D. Nixon, London.
MORRIS, HAROLD TOM KENHAM, Clerk to Harold A. Morris, Liverpool.
MURPHY, WILLIAM, Clerk to Herbert Godkin & Co., Loughborough.

NAYLOR, RONALD FREDERICK, Clerk to B. T. Davis & Co., Birmingham.
NICHOLLS, WILLIAM JOHN, Chief Accountant's Department, Port of London Authority, London.
NICHOLSON, WILLIAM RICHARD, Clerk to Joseph Carr McCracken & Co., Newcastle-upon-Tyne.
NICHOLSON-FLORENCE, OSCAR, Borough Treasurer's Department, County Borough of West Ham, London.

PARKER, DENNIS HUGH, Clerk to Dixon, Wilson, Tubbs & Gillett, London.
PARRY, KENNETH CLARK, County Treasurer's Department, Denbighshire County Council, Ruthin.
PAYBODY, JACK DOUGLAS, Clerk to W. E. Fitzhugh (Fitzhugh, Tillett & Co.), London.
PEARSON, GEOFFREY WILLIAM, Clerk to J. Pearson & Son, Bradford.
PEATEY, WILLIAM CHARLES, Clerk to R. M. Blaikie & Co., High Wycombe.
PIGGINS, FRANK HENRY, Clerk to F. N. Parker (Thomas May & Co.), Leicester.
PREST, WILLIAM, Clerk to Street, Brown & Co., Manchester.
PRICE, WILLIAM ELWYN, Clerk to Richard Leyshon & Co., Neath.

QUEENING, ARTHUR EDWARD, Clerk to C. H. Wells (Wells & Richardson), Sheffield.

RICHARDSON, JOHN EDGAR, Clerk to Edward Buckley (Craig, Gardner & Co.), Belfast.
ROCK, NORMAN ERNEST, Clerk to Ridsdale, Cozens & Co., Walsall.
RODGERS, JOHN ALFRED, Clerk to W. English (Feakins, English & Co.), Croydon.

SANDERSON, JOHN THOMAS, Clerk to Clarke & Clarkson, Lancaster.
SANDERSON, VICTOR NEVILLE, Clerk to Moore, Stephens & Co., London.
SHARPE, LESLIE, Clerk to Henry A. Morley, Nottingham.
SHAW, EDWARD JOSEPH MALACHY, Clerk to W. A. Kenny (Purtill & Co.), Dublin.
SHILLITO, JOSEPH DUNCAN, Clerk to Price, Waterhouse & Co., Leeds.
SHIPTON, ERIC JAMES ERNEST, Clerk to Allnutt, Bradfield & Co., London.
SIVASUBRAMANIAN, ARUNACHALA, B.A., formerly Clerk to B. P. Gharda & Co., Bombay.
SOUTHERN, JOHN EDWARD (J. G. Carter & Co.), Shrewsbury, Practising Accountant.
STILES, HOWARD WILLIAM, Clerk to Hubert & Winston Jones, Swansea.
SUR, UPENDRA NATH, B.Sc., formerly Clerk to S. B. Bullimoria & Co., Calcutta.
SWINSTEAD, HUGH TREVOR, Clerk to Edwards & Edwards, Dorchester.

TAYLOR, ARCHIBALD, Clerk to Rossi & Rossi, Norwich.
THOMAS, EWAN JENKIN, Clerk to Percy Walker, Simpson & Co., Cardiff.

WALLIS, WILLIAM REX, Clerk to Baskett & Bryant, London.
WALSH, JOHN NICHOLAS, Clerk to O'Neill, Barron & Co., Limerick.
WARDELL, ROBERT HENRY, formerly Clerk to Pelham Plunkett & Co., Dublin.
WARNER, JACK, Clerk to Wright & Favell, Sheffield.
WATSON, ARTHUR HENRY, Clerk to Durie, Kerr, Watson & Co., Birmingham.
WATSON, ROBERT JOHN RUTHVEN, Clerk to R. M. Branson (Thomas, May & Co.), Leicester.
WEEKS, RAYMOND CYRIL ALEXANDER, Borough Treasurer's Department, Ryde, I.O.W.
WHITE, ARTHUR IAN GEOFFREY, Clerk to P. T. Duxbury, North Shields.
WILSON, REX ROBERT, Clerk to A. C. McDonald (C. McDonald & Co.), Surbiton.
WILSON, TOM, County Accountant's Department, County Council of Durham, Durham.
WITTLETON, GEORGE JOHN, Clerk to Deloitte, Plender, Griffiths & Co., London.
WOOD, MAURICE ARTHUR, Clerk to Finnie, Ross, Welch & Co., London.
WORLEY, HORACE EDWIN ROBERT, Clerk to A. Clifford Towers (F. Roberts & Co.), Northampton.

YOUNG, GORDON, formerly Clerk to Bolton, Wawn & Co., Sunderland.
YOUNG, NOEL, Clerk to Bernard Walkden & Co., Radcliffe, Lancs.

SUMMARY :—
6 *Candidates awarded Honours.*
138 *Candidates passed.*
116 *Candidates failed.*

260 Total.

Passed in Intermediate

Order of Merit.

WALKER, FRANCIS MILWARD, Deputy City Treasurer, Oxford. (*First Place Certificate. Disqualified for Prize by age limit.*)

BAILEY, ERNEST GEORGE, Borough Treasurer's Department, Kettering. (*Second Place Certificate and Prize.*)

WOOD, WILLIAM (with H.M. Forces), formerly Clerk to Alfred G. Deacon & Co., Manchester. (*Third Place Certificate and Prize.*)

Intermediate.—*Continued*

Alphabetical Order.

AMOS, JAMES, H.M. Inspector of Taxes (1st District), Rochdale.

ARCHIBALD, HUGH WILSON, Clerk to John Cooper, London.

ARMSTRONG, ERNEST VIVIAN, Clerk to Bryce, Hanmer & Co., Liverpool.

BEAUMONT, ARTHUR WILLIAM, Clerk to H. P. Gould & Son, Norwich.

BEECHING, ALBERT GEORGE, Clerk to Deloitte, Plender, Griffiths & Co., London.

BELL, CYRIL, Clerk to H. E. Johnson (J. E. Denney, Bogle & Co.), London.

BERISFORD, HARRY STANLEY, County Treasurer's Department, Herefordshire County Council, Hereford.

BIGGS, CYRIL ERIC, Clerk to R. W. G. Taper, Paignton.

BOOKER, EDMOND ERIC, Clerk to A. J. Benjafield (Davis & Benjafield), Wells, Somerset.

BOSE, SATYA PREO, B.Com., B.L., Clerk to Lewin, Leaf & Co., London.

BOWEN, NORMAN FERRAND, Deputy Treasurer, Urban District Council, Crayford.

BRACEWELL, WILLIAM EDWIN, Clerk to S. Croudson (Croudson & Co.), Leeds.

BRITNELL, EDGAR GEORGE, Clerk to S. D. Payne (W. H. Payne & Co.), London.

BROWN, GEORGE WILLIAM, Clerk to R. Hood Coulthard, Borough Treasurer, South Shields.

BROWN, STANLEY, Clerk to Whitehead & Howarth, Lytham St. Annes.

BUTLER, JOHN ERNEST WILLIAM, Clerk to Crew, Turnbull & Co., London.

BYERS, JAMES GRAHAM, Borough Treasurer's Department, Croydon.

CAPEY, JAMES HUGH, Clerk to Hodgson, Harris & Co., Hull.

CAREY, ARTHUR PATRICK, Clerk to W. A. Kenny (Purtill & Co.), Dublin.

CARRUTHERS, JOHN, Clerk to James & J. H. Paterson, Greenock.

CHILCOTT, JOHN BOWERING, Clerk to J. & A. W. Sully & Co., Bridgwater.

COTTRILL, ALBERT JESSE, Clerk to C. Herbert Smith & Russell, Birmingham.

CROFT, JAMES ROBERT, Clerk to E. Seaton Lees (Webster, Lees & Co.), Blackpool.

DANSKIN, HENRY, Clerk to Atkinson & McMillin, Newcastle-upon-Tyne.

DAS, MANINDRA CHANDRA, B.A., formerly Clerk to A. M. Roy & Co., Calcutta.

DAS, UMES CHANDRA, M.A., B.Sc., Clerk to William Pickles, Manchester.

DICKSON, HERBERT EDWYN GEORGE, Clerk to D. Tilfourd Boyd (Oughton, Boyd, McMillan & Co.), Belfast.

DOODY, EDMOND JAMES, Clerk to F. R. O'Connor, Dublin.

DRISCOLL, CORNELIUS DESMOND, Clerk to R. C. L. Thomas (Walter Hunter, Bartlett, Thomas & Co.), Newport, Mon.

DUNNE, RICHARD OTTERAN, Clerk to F. M. Kelly (W. A. Deevy & Co.), Waterford.

ENDERBY, GEOFFREY CHARLES, Clerk to Phipp, Carlisle & Co., Nottingham.

FITCH, RONALD, Clerk to H. Smith (Fred A. Fitton, Wilson, Smith & Martin), Manchester.

FORSTER, BERT KENNETH, Clerk to Jasper C. Hood & Co., Middlesbrough.

FRANKLAND, FRANK WALKER KEEL, Clerk to Brown, Butler & Co., Leeds.

FRASER, NORMAN, Clerk to J. W. Davidson, Cookson & Co., Liverpool.

GARDNER, PETER DENNIS, Clerk to A. T. Keens (Keens, Shay, Keens & Co.), London.

GARDNER, WALDRON ARMAND, Clerk to H. Hardy (Kitson & Hardy), Wakefield.

GLEADELL, FREDERICK ARTHUR, Clerk to Mellors, Basden & Mellors, Nottingham.

GOLDMAN, HYMAN JACOB, Clerk to Mitchell & Smith, Glasgow.

GRAINGE, JOHN WILLIAM, City Treasurer's Office, York.

HADAWAY, ERIC AUBREY, Clerk to I. J. G. Babbage (Kemp, Chatteris, Nichols, Sendell & Co.), London.

HALL, KENNETH, Clerk to Armitage & Norton, Leeds.

HAYES, HERBERT, Clerk to Frank Horner & Co., Bolton.

HERRIOTT, CYRIL NORMAN, Clerk to Edward Bicker & Son, Bournemouth.

HICK, WILLIAM HERBERT, Clerk to R. W. Allott, Rotherham.

ILLINGWORTH, HARRY, Clerk to W. Claridge & Co., Bradford.

ISACKE, JEFFERY WYATT, Clerk to E. Bramwell, Birmingham.

JAMIESON, GEORGE WALTER, Clerk to T. M. Jamieson & Co., Dublin.

JAWALKAR, DHONDO GOVIND, M.A., formerly Clerk to S. R. Mandre & Co., Bangalore City.

JEFFERY, THOMAS, Clerk to C. F. Burton & Co., London.

JONES, NORMAN OSWYN, Clerk to Alexander Critchley, Liverpool.

JONES, RICHARD, Clerk to J. Pearson-Griffiths, Cardiff.

KELLY, FREDERICK GEORGE, Clerk to J. B. Bolton, Douglas, I.O.M.

KENNEDY, MAX, Clerk to J. T. Shawcroft, Borough Treasurer, Scunthorpe.

LACE, JAMES IRVING, Clerk to Edmund B. Gasking, Ormskirk.

LAW, SIDNEY GEORGE, Clerk to W. J. Norfolk (Norfolk, Pawsey & Co.), Clacton-on-Sea.

LEBBON, JACK FREDERICK, Clerk to G. D. Hayden, Holt, Norfolk.

LEE, ERIC GORDON, Clerk to J. W. Thompson (Allan Bradley & Thompson), Keighley.

LICKLEY, ALBERT RAYMOND, Clerk to J. Butler (Brown, Butler & Co.), Leeds.

LLOYD, BARBARA, Clerk to Harold Powell, Accountant, Abertillery Urban District Council, Abertillery, Mon.

LOW, WILLIAM WALLACE, Clerk to Fookes, Wyatt, Williams & Hickman, London.

LUDMAN, SAMUEL BERNARD, Clerk to J. Herbert Haley (J. Herbert Haley, Son & Co.), Bradford.

LUKE, JOHN ARTHUR HEARN, Clerk to Harold F. Joy, Weymouth.

MCDERMOTT, THOMAS FRANCIS, B.Comm., Clerk to C. P. McCarthy, Cork.

MCKENZIE, THOMAS, Clerk to A. T. Niven & Co., Edinburgh.

MCMAHON, JOHN JOSEPH, Clerk to F. R. O'Connor, Dublin.

MARTIN, WALTER WILFRED WILLIAM, Clerk to G. E. Martin, Borough Treasurer, Poplar, London, E.3.

MOUNTAIN, RONALD, Clerk to S. E. Crowe (Hollings, Crowe, Storr & Co.), Otley.

MUDIE, WILLIAM BROWN, Clerk to Gully, Stephens, Ross & Gregory, London.

NAWAR, YANNI IBRAHIM, B.Comm., Clerk to G. E. Levie (Elder Levie, Bryan & Maltby), London.

NETTLETON, HORACE EUGENE, Borough Treasurer's Department, Southport.

NORTON, JOHN EDWARD FOAKES, Audit Section, Co-operative Wholesale Society, Ltd., Bristol.

O'REILLY, HUGH JOHN JOSEPH, Clerk to Deloitte, Plender, Griffiths & Co., London.

OSBAND, SAMUEL, Clerk to Sissons, Bersey, Gain, Vincent & Co., London.

OWEN, JAMES ARTHUR, Clerk to Bourner, Bullock & Co., Leek.

RAMSDEN, ARTHUR JAMES, Clerk to Annan, Dexter & Co., London.

ROBB, RONALD SCOTT WILSON, Clerk to Andrew J. Dobbie, Edinburgh.

ROBERTS, ARTHUR CONWYSON, Clerk to W. R. L. Jenkins (Rowland Jenkins & Co.), Newport, Mon.

ROBERTS, MICHAEL ELVEY, Clerk to Percy A. Moulton (C. A. Moulton & Co.), Wakefield.

ROSS, NORMAN FISK, Clerk to R. M. Simpson (Simpson, Wreford & Co.), London.

RUMBALL, KENNETH JOSEPH, Clerk to J. H. Barton, Dublin.

RUSCOE, JOHN, Deputy Borough Treasurer, Borough of Leyton, London.

Intermediate.—*Continued*

SAVAGE, RICHARD JAMES, Clerk to G. O. Boundy, Taunton.
SCEATS, NORMAN STANLEY, Borough Treasurer's Department, Morley.
SEMPLE, JOHN CHARLES, Clerk to Deloitte, Plender, Griffiths & Co., London.
SHAH, JAYANTILAL SANKALCHAND, B.Com., Clerk to R. K. Dalal (Dalal & Shah), Bombay.
SHAW, WILLIAM EDWARD, Clerk to Henry Finck, London.
SHEPPARD, STANLEY ROY STEPHEN, Clerk to Tribe, Clarke, Painter, Darton & Co., London.
SPINK, HARRY, Clerk to Robert P. Shutt, Nelson.
SRINIVASAN, HIREMAGALUR RAMIENGAR, B.A., Clerk to S. R. Mandre, Bangalore.
STANIFORTH, DONALD EDWARD, Clerk to W. T. Manning (Thomas May & Co.), Leicester.
WALWYN, PETER RAYMOND, Clerk to W. G. Payne (W. H. Payne & Co.), London.
WATSON, ANDREW ALLAN, Clerk to Deloitte, Plender, Griffiths & Co., London.
WEIR, WILLIAM NOEL, Clerk to J. O. Worrall (Worrall & Speakman), Liverpool.
WHITELEY, THOMAS JOSEPH, Clerk to E. Warwick, Broadbent & Co., Leeds.
WHITESIDE, LESLIE, Clerk to C. Wild (Edwards & Edwards), Dorchester.
WILKINSON, CYRIL JOHN FREEMAN, Clerk to Deloitte, Plender, Griffiths & Co., London.
WILLIAMS, ALBERT COPLEY, Clerk to J. Mason (Edgar Oates & Co.), Manchester.
WILLIAMS, HARRY ALBERT BUCHANAN, Clerk to Craig, Gardner & Co., Dublin.
WILLIAMSON, EDWARD GIBSON, Clerk to Boyce, Welch & Co., Bradford.
WILSON, ERIC, Clerk to F. O. Wilson (Fred A. Fitton, Wilson, Smith & Martin), Manchester.
WINCH, GLADYS MARY, Audit Section, Co-operative Wholesale Society, Ltd., London.
WOODWARD, STANLEY, Clerk to A. P. Burton (A. P. Burton & Co.), Keighley.
WORLEDGE, WILLIAM, Clerk to F. W. Clarke & Co., Leicester.
WRIGHTSON, LARARD SNOWDEN, Clerk to Hodgson, Harris & Co., Hull.
YOUNG, REGINALD BEACH, Clerk to Blease & Sons, London.

SUMMARY :—
3 *Candidates awarded Honours.*
106 *Candidates passed.*
115 *Candidated failed.*

224 Total.

Passed in Preliminary

Order of Merit.

MITCHELL, LESLIE CHARLES, Hensington, Woodstock, Oxford. (*First Place Certificate and Prize.*)

Alphabetical Order.

AMIN, YOGENDRA CHUNIBHAI, Summerhill Hotel, Enniskerry, Co. Wicklow.
BANKS-SMITH, GEOFFREY HAROLD, Lynhurst, Lynn Road, Ely.
BEDFORD, WILLIAM ARTHUR, 341, Leeds Road, Newton Hill, nr. Wakefield.
BLEASE, ARTHUR, 122, Church Street, Heaton, Bradford.
BRADY, WILLIAM, 21, Columbia Street, Belfast.
BUTTERFIELD, JACK, 14, Britannia Street, Bingley.
CHAPPELL, THOMAS JAMES, 11, Kings Gardens, Ilford.
CLARK, DAVID HECTOR, 43, Bristol Avenue, Fortwilliam, Belfast.
CLEMENTS, GEOFFREY ALLAN, 29, Victoria Road, Diss, Norfolk.
CRABB, LEONARD CHARLES, Burrwood, 204, Barnet Road, Potters Bar, Middlesex.
DENNIS, CHARLES GEOFFREY DIXON, 51, Bannerman Road, Leicester.
DRANSFIELD, KENNETH, 315, Upper Dodworth Road, Barnsley.
EATON, JOHN WILFRED BAMFORD, Homeside, 10, Ballington Gardens, Leek, Staffs.
ELTRINGHAM, ALFRED, 201, Sunderland Road, South Shields.
FORD, COLIN ERNEST, 7, Dalguise Grove, Monk Bridge, York.
GEARING, FREDERICK CHARLES, 343, Seaside, Eastbourne.
GIBBS, PETER HENRY, 40, Livingstone Road, King's Heath, Birmingham.
GREENER, ALBERT THOMPSON, 3, Pawston Road, High Spen, Rowlands Gill, Co. Durham.
HEMMINGS, JOHN STUART, Talbot House, Church Crescent, London, E.9.
HICKINBOTHAM, LEONARD JOHN, 43, Brandon Road, Hall Green, Birmingham.
HINEY, WILLIAM JOSEPH, 42, Casino Road, Fairview, Dublin.
HOWELL, ARTHUR CYRIL, Ash Tree House, King Street, Cefn Mawr, nr. Wrexham.
INGHAM, KENNETH PROCKTER, 15C, Chadderton Road, Oldham.
LYKE, JOHN BERNARD THOMAS KNOWLES, Aylestone House, Aylestone Hill, Hereford.
McCLINTOCK, EDWARD HAROLD, Wolfhill Avenue, Ligoniel, Belfast.
McKELVEY, SAMUEL IRWIN, Killyleagh Street, Crossgar, Co. Down.
MADELL, HENRY RUSSELL RUDOLPH, 94, Cavendish Avenue, Harrow.
MASON, GEORGE, Mason's Stores, Greengate Lane, Kendal.
MOTUM, JOHN ARTHUR EVERETT, Post Office, Elmstead, Colchester.
O'NEILL, JOSEPH FRANCIS, 3, Wilfrid Road, Kenilworth Square, Rathgar.
RUMBOLD, HUGH CECIL, Holly Lodge, Southtown, Great Yarmouth.
SMITH, GERALD ARTHUR, 128, Capstone Road, Bromley, Kent.
TARRY, GEOFFREY HAROLD, 22, Middleton Street, Aylestone, Leicester.
WARRILLOW, GEORGE ALEXANDER, 10, Ipsley Grove, Gipsy Lane, Erdington, Birmingham.
WEAVER, VINCENT JOHN, 19, Checketts Lane, Worcester.
WINNINGTON, ROBERT IVAN, 13, Kinnaird Terrace, Artrim Road, Belfast.

SUMMARY :—
1 *Candidate awarded Honours.*
36 *Candidates passed.*
32 *Candidates failed.*

69 Total.

SCOTTISH BRANCH

Meeting of Scottish Council

The meeting of the Council of the Scottish Branch was held in Glasgow on February 2. There were present : Mr. Robert T. Dunlop, President, in the chair ; Mr. D. R. Matheson, LL.B. and Mr. P. G. S. Ritchie, Vice-Presidents ; Mr. John A. Gough, Mr. Robert Fraser and Mr. Robert Milne, Glasgow ; Mr. W. J. Wood, Perth ; Mr. Festus Moffat, J.P., Falkirk ; Mr. J. C. McMurray, Kilmarnock ; and Mr. James Paterson, Secretary.

Apologies for absence were intimated from Mr. Walter MacGregor, J.P., Mr. Alex. Davidson, Mr. D. M. Muir, Mr. J. T. Morrison, J.P., Mr. W. Hill Jack, Mr. William Houston, Mr. E. Hall Wight, and Mr. E. Mortimer Brodie.

A number of matters connected with the membership of the Society and the examination of candidates in Scotland were under consideration, and were dealt

with. Consideration was also given to matters affecting the profession arising out of War Emergency Legislation, and reports were made regarding these by representatives of the Scottish Branch on the London Council.

The Council placed on record their renewed appreciation of the fresh practical evidence of the great interest taken in the Scottish Branch and the Glasgow Students' Society by the late Mr. W. Davidson Hall, their colleague for many years, who bequeathed £100 to the Scottish Branch.

MEMBERSHIP

The following additions to and promotions in the membership of the Society have been completed since our last issue :—

ASSOCIATES TO FELLOWS

Astle, George (R. R. France & Co.), Leeds, Practising Accountant ; **Blunt,** Albert Victor, Treasurer, Tyne Improvement Commission, Newcastle-upon-Tyne ; **Bray,** Frank Sewell (Tansley, Witt & Co.), London, Practising Accountant ; **Brown,** Harold (Harold Brown & Co.), Birmingham, Practising Accountant ; **Gubbay**, David (Gubbay & Co.), London, Practising Accountant ; **Howard,** Arthur George, London, Practising Accountant ; **Hutton,** Kenneth Barker (Maurice Thompson & Co.), London, Practising Accountant ; **Raby,** Edward Walker, Borough Treasurer, Heywood, Lancs ; **Riley,** Kenneth John (A. J. Palmer & Co.), Fareham, Hants, Practising Accountant.

ASSOCIATES

Batteson, Courtney Spencer, with H. E. Mattinson & Partners, Durban ; **Butterworth,** Ernest, with T. N. Steel & Co., Huddersfield ; **Davies,** Wynne Illtyd, with Deloitte, Plender Griffiths & Co., Swansea ; **Locke,** Charles Henry, with W. Geo. Tovell & Co., Southampton ; **Poole,** Robert Tinsley, with J. A. Kinnear & Co., Dublin ; **Squires,** Frank Rowland, with A. P. Smith & Co., Manchester ; **Turnbull,** George Mattison Barton, City Treasurer's Department, Newcastle-upon-Tyne ; **Ward,** Philip Austin, with Thomas May & Co., Leicester.

FORTHCOMING EVENTS

Mar. 5	London	Students' Society. At Incorporated Accountants' Hall, at 4.30 p.m. Annual General Meeting. At 5 p.m. Lecture : " The Reason and Purpose of Costing," by Mr. G. F. D. Rice, Incorporated Accountant.
5	Liverpool	At Liverpool Incorporated Accountants' Hall, Derby Square, at 5.45 p.m. Lecture : " The Detection of Fraud," by Mr. W. W. Bigg, F.C.A., F.S.A.A.
7	Bradford	At the Liberal Club, Bank Street, Bradford, at 6.30 p.m. Lecture : " Executorship Accounts," by Mr. F. P. Fearnley, Incorporated Accountant.
21	Bradford	At the Liberal Club, Bank Street, Bradford, at 6.30 p.m. Demonstration lecture by a representative of Burroughs Adding Machines, Ltd. (Joint lecture with Bradford and District Chartered Accountants' Students' Association.)
29	Cardiff	Lecture : " Should We Save or Spend ? " by Mr. Leo T. Little, B.Sc.(Econ.).

PERSONAL NOTES

Mr. Henry J. Burgess, a member of the Council of the Society of Incorporated Accountants, has been elected chairman of the Rate and Finance Committee of the Corporation of London.

Mr. H. P. Gowen, J.P., F.S.A.A. (Norwich), Mr. H. Tudor Hughes, A.S.A.A. (Colwyn Bay), and Mr. Hugh Boyd, F.C.A., F.S.A.A. (Belfast), have been appointed members of Local Price Regulation Committees, in the Eastern, North Wales and Northern Ireland districts respectively. Other appointments of Incorporated Accountants to local Committees under the Price of Goods Act were announced in the January issue of ACCOUNTANCY (page 110).

Messrs. Temple, Gothard & Co., Incorporated Accountants, of London and Richmond, Surrey, regret to announce that owing to continued ill-health, Mr. W. P de la Haye, F.S.A.A., has retired from the firm as from February 1, 1940. The practice will be carried on by the remaining partners, Mr. C. H. Temple, F.S.A.A., Mr. M. T. Amos, F.S.A.A., and Mr. J. T. Patterson, A.C.A., A.S.A.A., at the same addresses.

Messrs. Spicer & Pegler, of 19, Fenchurch Street, London, E.C.3, announce that Mr. C. Hughes has retired from the firm as from January 31. The business will be carried on by the remaining partners.

Mr. Fred. S. Skirrow, Incorporated Accountant, has commenced public practice at 10, Whitakers Buildings, New Victoria Street, Bradford.

Mr. Clare Catley, M.B.E., has taken into partnership his son, Mr. C. L. Catley. They will practice at Smith's Chambers, 6, Westborough, Scarborough, under the style of Clare Catley & Son, Incorporated Accountants.

Mr. Daniel Mahony has amalgamated his practice with that of Mr. Harry Rose and Mr. D. F. Gay, who previously practised as Philip E. Farr, Rose & Co. The joint practice will be carried on under the style of Farr, Rose & Mahony, Incorporated Accountants, at 32, London Wall, London, E.C.

Mr. E. Leheup and Mr. C. Pease are continuing in partnership the practice of the late Mr. L. A.Tomlinson, Incorporated Accountant, under the style of L. A. Tomlinson & Co., Incorporated Accountants, at Eldon Chambers, Wheeler Gate, Nottingham.

REMOVALS

Messrs. Brahmayya & Co., Incorporated Accountants, have removed their offices to Andhra Insurance Buildings, Thambu Chetty Street, Madras.

Messrs. Hilton, Sharp & Clarke, also practising at London and Brighton, announce that their Horsham office has been removed to Westminster Bank Chambers, Carfax.

OBITUARY

KALYAN SUBRAMANI AIYAR

We learn with deep regret that Mr. K. S. Aiyar, B.A., F.S.A.A., who was the senior Incorporated Accountant in India, died at Bangalore on January 2. Mr. Aiyar was 82 years of age and had been a member of the Society of Incorporated Accountants since 1890 : he was the senior partner of Messrs. K. S. Aiyar & Co., Bombay and Bangalore, and was the first President of the Incorporated Accountants' Bombay and District Society, founded in 1931. Mr. Aiyar was a pioneer of commercial education in India. He was a Fellow of the Universities of Madras and Bombay, and was instrumental in securing the institution of examinations in commerce by the Madras Government and of the degree of B.Com. in Bombay University. When the Bombay Life Assurance Co., Ltd., was founded in 1908 Mr. Aiyar was its first managing director. He was also a Justice of the Peace and an Honorary Presidency Magistrate.

JAMES WILLIAM REYNOLDS

We regret to record that Mr. J. W. Reynolds, F.S.A.A., senior partner of Messrs. J. W. Reynolds & Son, Bradford, died on January 24 at the age of 76. Mr. Reynolds became a member of the Society of Incorporated Accountants in 1893 and commenced public practice in Bradford in 1898. He was a member of the Committee of the Incorporated Accountants' Bradford and District Society from its foundation in 1910 till 1938, and President for the year 1927-28. His son, Mr. Herbert Reynolds, who pre-deceased him, was for a considerable period the Hon. Secretary.

Mr. J. W. Reynolds was for many years Secretary and Treasurer of the Bradford and District Wholesale Confectioners' Association and Secretary of the West Bradford Golf Club. He was also the accountancy member of the Bradford Rotary Club.

GEORGE HENRY HANDFORD

We regret to announce the death on February 12 of Mr. G. H. Handford, F.S.A.A., a partner in Messrs. Fred Hargreaves & Co., Incorporated Accountants, Manchester. Mr. Handford became a member of the Society of Incorporated Accountants in 1907, after serving articles with Mr. Frederick A. Fitton, F.S.A.A., and a few years later entered the employment of Mr. Fred Hargreaves, F.S.A.A., by whom he was admitted to partnership in 1923. He became a Fellow of the Society in 1926. Mr. Handford was a devoted worker for the Methodist Church, in which he filled most of the lay offices open to him, and his services were especially valued in financial matters.

EDINBURGH'S SURPRISE FINANCE

Early last month, the Edinburgh Corporation caused a surprise by announcing its intention to repay the 4½ per cent. 1940-60 stock on the first due date. Public subscriptions at a price of 95 per cent. accounted for £1,500,000 of the loan at the time of its issue in April, 1924, while £500,000 was privately placed that year. Repayment will be effected on May 15 next, the first possible redemption date. Few Corporations have the financial resources to repay such a large loan, particularly since expenditure is heavy in connection with A.R.P. measures and other works. The decision to redeem rather than convert into a lower interest-bearing security has been dictated by the Treasury ban on municipal conversions pending an issue of War Loan.

The Edinburgh City Chamberlain, Mr. John D. Imrie, M.A., F.S.A.A., has been credited with being chiefly responsible for this very successful result.

AFFIDAVITS—A PRACTICE POINT

MR. JUSTICE CROSSMAN, in the Companies Court on January 29, said it was desirable that the attention of the professional public should again be called to the following practice note (1923) W.N.288 :—" The Judges of the Chancery Division have decided that in future it is desirable that in all affidavits for use in court and in chambers in the Chancery Division dates and sums of money should be written or printed in figures and not in words."

REGISTRAR OF DEEDS OF ARRANGEMENT.

The Board of Trade announce that the address of the Registrar of Deeds of Arrangement is now 296/298, North Promenade, Blackpool (Telephone, Blackpool 2635).

RECENT LEGAL CASES

The following recent legal cases are dealt with in this issue :—